

COUNCIL CHAMBERS

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

COUNCIL MEMBERS

Dennis Kennedy, Mayor Steve Tate, Mayor Pro Tempore Larry Carr, Council Member Mark Grzan, Council Member Greg Sellers, Council Member

REDEVELOPMENT AGENCY

Dennis Kennedy, Chair Steve Tate, Vice-Chair Larry Carr, Agency Member Mark Grzan, Agency Member Greg Sellers, Agency Member

WEDNESDAY, MAY 4, 2005

AGENDA

JOINT MEETING

CITY COUNCIL SPECIAL AND REGULAR MEETING

and

REDEVELOPMENT AGENCY SPECIAL MEETING

6:00 P.M.

A Special Meeting of the City Council and Redevelopment Agency is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions.

Dennis Kennedy, Mayor/Chairman

CALL TO ORDER

(Mayor/Chairperson Kennedy)

ROLL CALL ATTENDANCE

(City Clerk/Agency Secretary Torrez)

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

(City Clerk/Agency Secretary Torrez)

City of Morgan Hill Special & Regular City Council and Special Redevelopment Agency Meeting May 4, 2005 Page - 2 -

6:00 P.M.

City Council Action and Redevelopment Agency Action

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

CLOSED SESSION ANNOUNCEMENT

7:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

Jasmine Square Playground Construction Go Kids - *Larry Drury* Home Depot – *Holly Martindale* Kaboom - *Whitney Hampton*

PROCLAMATIONS

National Nurses Week - May 6 thru May 12, 2005 Michael Johnson and/or Linda Hoeber Permanente Medical Group South Bay Regional Appointment & Advice Call Center

> "National Public Works Week" – May 15 thru May 21, 2005 "Bike to Work Week" – May 15 thru May 21, 2005 Public Works Staff

> > National Police Week *Police Chief Cumming*

National Telecommunicators Week Police Chief Cumming

PRESENTATION

Relay for Life - May 21, 2005 Linda Roma, American Cancer Society City of Morgan Hill Special & Regular City Council and Special Redevelopment Agency Meeting May 4, 2005 Page -3-

INVITATION

Art a La Cart – May 14, 2005 Therese Lugger

CITY COUNCIL REPORT

Mayor Kennedy

CITY COUNCIL SUB-COMMITTEE REPORTS

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.

(See notice attached to the end of this agenda.)

PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND PRESENT IT TO THE CITY CLERK.

(See notice attached to the end of this agenda.)

PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY COUNCIL/REDEVELOPMENT AGENCY.

City Council Action

CONSENT CALENDAR:

ITEMS 1-11

The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

	Time Estimate Consent Calendar: 1 - 10 Minutes	Page
1.	BI-ANNUAL VACANCY SURVEY	7
	Recommended Action(s): Establish the Bi-Annual Vacancy Rate for April 2005 as Recommended by the Planning Commission.	
2.	AUTO DEALERSHIP STRATEGY	8
	Recommended Action(s):	

- 1. <u>Direct</u> Staff to Meet with the Neighborhood Residents and Property Owners, as needed, in the Walnut Grove Area to Discuss Issues and to Report back to the Council Community and Economic Development Committee Regarding the Discussions; and
- 2. <u>Direct</u> Staff to Process a Planned Unit Development (PUD) Amendment to Remove the Existing Developed Properties South of Walnut Grove Drive from the Existing PUD Zoning.

City of Morgan Hill Special & Regular City Council and Special Redevelopment Agency Meeting May 4, 2005 Page -- 4 --

	Time Estimate Consent Calendar: 1 - 10 Minutes	Page
3.	 ASSISTANCE WITH REVIEW OF THE COYOTE VALLEY SPECIFIC PLAN Recommended Action(s): Authorize the City Manager to Execute the Agreement between the City of Morgan Hill and Fehr and Peers, Transportation Consultants, Subject to Review and Approval by the City Attorney; Authorize the City Manager to Execute the Agreement between the City of Morgan Hill and the Law Office of Roger Beers, Subject to Review and Approval by the City Attorney; and Appropriate \$50,000 within the General Plan Update Fund for these Agreements. 	9
4.	MONTEREY UNDERGROUND UTILITIES DISTRICT Recommended Action(s): Direct Staff to Notice the Required Public Hearing to be held on June 1, 2005 for the Formation of an Underground Utility District along Monterey Road between Dunne Avenue and Cosmo Avenue, per City of Morgan Hill Municipal Code, Chapter 12.12.	10
5.	SECOND AMENDMENT TO COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE AGREEMENT. Recommended Action(s): Direct City Manager to Execute the Agreement with the County, Subject to Review and Approval by the City Attorney.	11
6.	2004 ANNUAL CONSUMER CONFIDENCE REPORT REGARDING WATER QUALITY Recommended Action(s): For Council Information Only.	12
7.	 APPROVAL OF WELL ACCESS AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT (SCVWD) FOR WELLS AT MISSION RANCH DEVELOPMENT (APN: 728-32-008)	13
8.	REVISION TO BURROWING OWL PLAN Recommended Action(s): Approve the Plan Revision.	14
9.	AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSON, SIEGEL, McCLURE & FLEGEL, LLP Recommended Action(s): Authorize the City Manager to Execute an Amended Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP.	16
10.	ADOPT ORDINANCE NO. 1722, NEW SERIES Recommended Action(s): Waive the Reading, and Adopt Ordinance No. 1722, New Series, and Declare That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 13.04 (WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING WATER METERS FOR MULTI-UNIT DWELLINGS.	17
11	APPROVE SPECIAL CITY COUNCIL MEETING MINUTES OF APRIL 20, 2005	21

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City Council and Redevelopment Agency Action

CONSENT	CALENDAR:

ITE	10	11

	Time Estimate Consent Calend	lar: 1 - 10 Mi	inutes				Page
12.	Recommended 1. Adopt the U	Action(s): Jpdated Invest	ment Policy for the C	ity; and edevelopment Agency.			23
13.				GULAR CITY C NUTES OF APRIL 20,	OUNCIL AND 2005		65
•	Council 2 c hearings:	Action					
1 UDLI	Time Estimate						Page
14.	5 Minutes	ZONING LaBRUCHI Public Heari Please Limit Council Disc Action- Action-	ng Opened. Your Remarks to 3 Moussion. Motion to Waive	APPLICATION, Minutes. Public Hearing Reading in Full of Zoo Zoning Amendment	Closed	Ordinance.	87
15.	10 Minutes	Public Heari	ng Opened. Your Remarks to 3 M cussion.	AT PROCESSING FE Minutes. Public Hearing evising Fees and Service	Closed	<u>rs</u>	93
City	Council A	Action					
<u>OTHE</u>	R BUSINESS: Time Estimate						Page

16. 10 Minutes

INDEPENDENCE DAY INC. AND MORGAN HILL MUSHROOM MARDI

GRAS EVENTS

Recommended Action(s): Consider Oral Report by the Council's Community and

Economic Development Committee and Take Action as Needed.

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OTHER BUSINESS:

OIII	Time Estimate		Page
17.	30 Minutes	 MORGAN HILL LIBRARY – APPROVAL OF SCHEMATIC DESIGN Recommended Action(s): Approve Schematic Design; Provide Direction Regarding LEED; and Authorize the City Manager to Prepare and Execute a Second Amendment to the Contract with Noll & Tam in the Amount of \$171,753, Subject to Review and Approval by the City Attorney. 	100
18.	10 Minutes	SETTING OF ANNUAL PUBLIC HEARING FOR FOX HOLLOW-MURPHY SPRINGS LIGHTING AND LANDSCAPE ASSESSMENT DISTRICT Recommended Action(s): 1. Approve the Three Resolutions Setting the Annual Public Hearing for the Fiscal Year 2005-2006 Fox Hollow-Murphy Springs Lighting and Landscaping Assessment District; and 2. Direct the City Clerk to Notice a Copy of the Resolutions, as noted.	101
19.	15 Minutes	ECONOMIC DEVELOPMENT INHIBITORS Recommended Action(s): Approve and Direct Staff to Implement Recommendations Made by the Community and Economic Development Committee Related to Economic Development Inhibitors.	109
20.	5 Minutes	PARKS AND RECREATION COMMISSIONER RESIGNATION Recommended Action(s): 1. Accept the Resignation of Parks and Recreation Commissioner Don Jensen; and 2. Direct Staff on the Preferred Process to Fill the New Vacancy.	110
21.	15 Minutes	CITY ATTORNEY SERVICES Recommended Action(s): Provide Direction to Staff on Additional Information or Analysis Needed to Support City Council's Decision on Future City Attorney Services.	111
22.	5 Minutes	RECONSIDERATION OF FISCAL YEAR 2005-2006 OPERATING AND CAPITAL IMPROVEMENT BUDGET WORKSHOP DATE (Continued from 4/20/05)	123

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT



BI-ANNUAL VACANCY RATE SURVEY

RECOMMENDED ACTION(S): Establish the bi-annual vacancy rate for April 2005 as recommended by the Planning Commission.

Agenda Item # 1
Prepared By:
Municipal Services Assist.
Approved By:
BAHS Director
Submitted By:
City Manager

EXECUTIVE SUMMARY: According to the Morgan Hill Municipal Code, Chapter 17.36 relating to Condominium Conversions, the apartment vacancy rate shall be established in April and October of each year on the basis of a representative sampling of apartment buildings. The vacancy rate survey must be reported to both the Planning Commission and the City Council.

The most recent multi-family housing estimates from the State Department of Finance indicate a total of 1,754 multi-family units. Survey results account for over 50% of all such units; senior housing units are not included in the sampling but are included as supplemental information. Also, for general information purposes, included is a brief summary of current rent rates as compared to rent rates reported six months ago.

The survey has been completed and is attached. On April 12, 2005, the Planning Commission accepted the survey results which established the vacancy rate for April 2005 at 4.72%. This rate is significantly higher than the previous rate of 3.31% established in October 2004. It is recommended that the Council accept the Planning Commission's survey findings.

FISCAL IMPACT: No Fiscal Impact.



Agenda Item # 2
Submitted By:
BAHS Director
Approved By:

AUTO DEALERSHIP STRATEGY

RECOMMENDED ACTIONS: 1) Direct staff to meet with the neighborhood residents and property owners, as needed, in the Walnut Grove area to discuss issues and to report back to the Council

Community and Economic Development Committee regarding the discussions and 2) Direct staff to process a PUD amendment to remove the existing developed properties south of Walnut Grove Drive from the existing PUD zoning.

EXECUTIVE SUMMARY: In March 2005, the City Council adopted the following goal: "By April 2005, the Community and Economic Development Committee will evaluate the adopted Auto Dealership Strategy and recommend revisions, if appropriate, and suggest a strategy for implementation." The Community and Economic Development Committee (C&ED) has met several times to discuss the Auto Dealership Strategy (Strategy) with staff. The C&ED is considering several options, but before it can make a recommendation it needs more input from the neighborhood and property owners in the "Walnut Grove PUD area." The C&ED is focused on the Walnut Grove PUD area because it is a key component of the existing Strategy and needs to be resolved before recommending any overall revisions.

Towards that end, the C&ED is recommending that staff meet with the neighborhood residents and owners of the property in the PUD area to discuss a variety of issues and to see if a common understanding can be reached. After these meetings, staff would report its findings back to the C&ED. The C&ED would then incorporate this input into its recommendations. We estimate it could take upwards of the 90 days for staff to hold its meetings, for the C&ED to develop its recommendations and for the C&ED to report back to the Council.

The C&ED is also recommending that the existing developed properties south of Walnut Grove Dr. but north of Dunne Ave. be removed from the PUD zone. These properties include Kentucky Fried Chicken, Chevron, and Scramblz Restaurant. Since these properties are already developed, the buildings design are already established and would create an unnecessary complexity to creating PUD guidelines. The PUD requirement would also be an inhibitor to the development of the small vacant parcel behind Scramblz Restaurant because it would need to create the PUD guidelines before it could be developed. The vacant properties north of Walnut Grove Dr. as well as the existing Chevrolet dealership would remain in the PUD zone. The properties removed from the PUD zone would still need to comply with zoning standards related to highway commercial development. To remove the properties from the PUD zone will require an amendment to the PUD which will require both Planning Commission and Council approval and probably take upwards of 120 days to complete.

FISCAL IMPACT: None at this time



CITY COUNCIL STAFF REPORT

MEETING DATE: May 4, 2005

TITLE: Assistance with Review of Coyote Valley Specific Plan

RECOMMENDED ACTION:

- 1. Authorize the City Manager to execute the agreement between the City of Morgan Hill and Fehr and Peers, Transportation Consultants, subject to review and approval by the City Attorney
- 2. Authorize the City Manager to execute the agreement between the City of Morgan Hill and the Law Office of Roger Beers, subject to review and approval by the City Attorney
- **3.** Appropriate \$50,000 within the General Plan Update Fund for these agreements

A	genda Item # 3
Pı	repared By:
C	ontract Planner
A	pproved By:
$\overline{\mathbf{C}}$	ommunity
D	evelopment Director
Sı	ubmitted By:

City Manager

EXECUTIVE SUMMARY: Over the past year, the City has monitored and commented upon the development of the Specific Plan for Coyote Valley. The City has identified issues of concern with that Plan and has attempted to influence San Jose to address those concerns, with limited success. Through this process, the need for additional expertise in two areas has become evident. Those areas include transportation and legal analysis.

The potential for Coyote Valley development to increase traffic congestion on Highway 101 and Morgan Hill streets is significant. It is critical for Morgan Hill to ensure that the environmental impact report (EIR) for the Coyote Valley Specific Plan thoroughly and accurately assesses those impacts and identifies measures which will ensure they are properly mitigated. To do this, it will be necessary to review the methodology and assumptions used in the traffic modeling which will be conducted by San Jose as well as the forecast traffic volumes and operating levels for local streets. Staff proposes retaining the consulting firm of Fehr and Peers for this purpose. Fehr and Peers is a well-respected transportation consulting firm which the City has used for many past projects.

In order to be effective in the EIR process, it is important for Morgan Hill to understand its rights and San Jose's obligations. This includes such items as gaining access to information used by San Jose in development of the Specific Plan and EIR, review of the structure of the EIR, and ensuring that San Jose meets its legal obligations to address Morgan Hill and regional concerns. Staff proposes retaining Roger Beers for this purpose. Mr. Beers has significant experience with land use and environmental matters and has assisted the City with several past environmental issues.

The need for this additional expertise was discussed by the City Council's Regional Planning and Transportation sub-committee. That sub-committee endorses the need for this assistance and the proposed agreements.

FISCAL IMPACT: It is proposed that \$15,000 of General Fund monies, \$20,000 of Traffic Impact Fee Fund monies, and \$15,000 of General Plan Update Fund monies be used to fund these agreements. Funds are available within the fund balances of these funds to cover the costs associated with the agreements.



MONTEREY UNDERGROUND UTILITIES DISTRICT

RECOMMENDED ACTION(S): Direct staff to notice the required public hearing on June 1, 2005 for the formation of an Underground Utility District along Monterey Road between Dunne Avenue and Cosmo Avenue per City of Morgan Hill Municipal Code, Chapter 12.12.

EXECUTIVE SUMMARY: As previously directed, the Council desires to place all overhead utility lines underground and remove the existing utility poles along both sides of Monterey Road between Dunne Avenue and Cosmo Avenue using PG&E Rule 20A funds. The use of Rule 20A funds requires the City to establish an Underground Utility District (UUD).

Agenda Item # 4
Prepared By:
Assistant Engineer
Approved By:
Public Works Director
Submitted By:
City Manager

At its February 16, 2005 meeting, Council directed staff to hold a public information meeting for all property owners affected by the project. The meeting took place on March 16, 2005 and was held at the Machado Room in the Community and Cultural Center at 7:00 PM. All affected property owners were invited, however, only one attended. During the meeting, staff discussed the project's scope of work, traffic conditions during construction, scheduling issues, PG&E's involvement in the project, and the UUD procedure and implications.

As recommended, staff is proposing to hold a public hearing to form the UUD on June 1, 2005. All property owners and all utilities within the proposed district will be notified of the public hearing at least 15 days before the hearing. Upon establishment of the UUD by the City, PG&E and the other affected pole mounted utility companies will be notified to prepare design documents and arrange for their lines and facilities to be undergrounded. Due to scheduling logistics for PG&E's limited construction crews, it is estimated that actual construction may begin anywhere from 18 to 24 months after establishment of the UUD.

FISCAL IMPACT: No cost impact at this time.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 4, 2005

SECOND AMENDMENT TO COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE AGREEMENT

RECOMMENDED ACTION(S):

Direct Staff to Execute the Agreement with the County

EXECUTIVE SUMMARY: Since 1993, the City has met its obligation to provide for household hazardous waste disposal by participating in the Countywide Collection Program. This popular program provides City residents with the opportunity to participate in several collection events each month. The new permanent collection center in San Martin has dramatically improved the

convenience associated with these services and, therefore, further increased the demand for them.

Agenda Item # 5

Prepared By:

Program Administrator

Approved By:

Public Works Director

Submitted By:

City Manager

In 2003, the Council authorized the City Manager to execute a three-year Countywide Household Hazardous Waste Agreement. While this is a three-year agreement, it requires an annual amendment that requires jurisdictions to commit to a level of participation in the program. Based on the City's past experiences, a commitment of \$20,000 will ensure that all Morgan Hill residents desiring to participate in the program will be allowed to do so. Both the Utilities and Environment Subcommittee and staff recommend that the City Manager be authorized to execute the attached Second Amendment to the Countywide Household Hazardous Waste Agreement.

FISCAL IMPACT: A maximum of \$20,000 in expenditures from the City will result from this action. This amount is currently proposed in the Environmental Programs Division's budget (Fund 232). The source of these funds is the franchise fee on solid waste services that is dedicated to AB 939 purposes.



2004 ANNUAL CONSUMER CONFIDENCE REPORT REGARDING WATER QUALITY

RECOMMENDED ACTION(S): For Council information only.

EXECUTIVE SUMMARY: Every year, the California State Department of Health Services (DOHS) requires the City of Morgan Hill to prepare and distribute to every water customer an annual Consumer Confidence Report (CCR) providing information on the water quality supplied to the community. Attached for Council information is the 2004 report.

A	Agenda Item #6
P	Prepared By:
	Deputy Director of Public Works
A	Approved By:
Ē	Department Director
_s	Submitted By:

City Manager

The City of Morgan Hill is regulated by the California State Department of Health Services (DOHS), Office of Drinking Water. DOHS has developed Primary and Secondary Standards called Maximum Contaminant Levels (MCL's) to ensure the protection of public health from contamination in domestic water supplies. Primary Standards are established for potentially harmful substances and Secondary Standards deal with the aesthetic qualities of the water that include odor, taste, and color. The City has also tested for more than 60 other unregulated substances.

On August 10, 2004 the City published a notice in the Morgan Hill Times that the City failed to meet the Total Coliform bacteriological standard for July 2004. This violation occurred as a result of 3 routine samples that tested positive for Total Coliform bacteria. As a result, the City exceeded the maximum percentage of positive samples allowed for one month. The City immediately investigated for potential sources of contamination and flushed the distribution system in the affected area. No source of contamination was found. Nine repeat samples were taken and were found to be absent of total coliform. It is uncertain as to the cause of the initial positive samples, but all subsequent testing in the same area was total coliform negative. For 2004, the City collected 520 routine bacteriological samples from the distribution system. The three mentioned above were the only positive samples for the year.

All testing of water from the City water system is performed by a state-certified independent laboratory. Tests are performed both at the wellhead of the City's 14 deep water wells to check the quality of the source water and throughout the distribution system. Perchlorate sampling was performed monthly at all City wells and an Ion Exchange Treatment System was installed at Nordstrom well to supplement peak water demand. Also, an Ion Exchange Treatment System was installed at Tennant well to supplement water production. The cost of water testing during 2004 was approximately \$150,000 (\$50,000 for perchlorate testing).

The CCR is attached. It was reviewed and approved by the Utilities and Environment Committee on Monday April 18, 2005.

FISCAL IMPACT: The cost of preparing, printing, and mailing the 2004 Consumer Confidence Report has been reduced again this year by incorporating the document in City Visions and the approximate cost is \$1,700. Sufficient funds are currently budgeted for this expenditure in our Water Operations budget.



APPROVAL OF WELL ACCESS AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT FOR WELLS AT MISSION RANCH DEVELOPMENT (APN: 728-32-008)

Agenda Item # 7
Prepared By:
Senior Civil Engineer
Approved By:
Public Works Director
Submitted By:

City Manager

RECOMMENDED ACTION: Approve well access agreement with SCVWD at the Mission Ranch Development and authorize the City Manager to execute the agreement.

EXECUTIVE SUMMARY: As a result of contamination detected in several existing City water wells, the City Council declared an emergency to locate and drill a new well. A site was located on an open space and public service easement area of Tract No. 9423 at the Mission Ranch Development. Staff was successful in acquiring an easement for construction of a new water well under emergency conditions per City Council direction. A test hole was drilled which was converted to two monitoring wells after testing and logging. Unfortunately, the City had to abandon the production well due to poor water quality and production. Santa Clara Valley Water District expressed an interest in taking over the monitoring wells to perform the following: a) To collect samples of groundwater b) To measure the depth of groundwater c) To collect other data related to groundwater. A right-of-entry and well access agreement was prepared by SCVWD and has been reviewed and approved by the City Attorney.

Upon execution of the agreement, the City of Morgan Hill grants to SCVWD permission to access monitoring wells with the following State well numbers: 09S03E09R004 and 09S03E09R005.

FISCAL IMPACT: There is no fiscal impact at this time.



REVISION TO BURROWING OWL PLAN

RECOMMENDED ACTION(S):

Approve the Plan Revision

EXECUTIVE SUMMARY: The City adopted a Citywide Burrowing Owl Habitat Mitigation Plan in June, 2003. The City has contracted with a local consulting firm, Live Oak Associates, to serve as the Plan Administrator.

One of the major reporting activities associated with the Plan, is the production of an Annual Report detailing the City's progress to date in establishing preserve lands. Now that implementation activities have been in place for over one year, both Live Oak and City staff have determined that the original implementation schedule contained in the Plan should be amended.

Table IV-1, as originally included in the Plan, calls for the Annual Report to be produced by June 30th of each year. Given that the breeding season for the owls lasts well into the summer, it is not feasible to produce an accurate report by June 30th. Staff recommends that the due date for the Annual Report be pushed back to October 31st in order to provide the Plan Administrator with an adequate time period to produce the Report.

FISCAL IMPACT: No budget adjustment is requested at this time.

Agenda Item # 8
Prepared By:
Program Administrator
Approved By:
Public Works Director
Submitted By:
City Manager

Table IV-1 Implementation Schedule for Administrative Activities to be Completed by City Departments

Activity	Responsible City	Deadline
	Entity	
Establish Mitigation Fee	Finance	7/30/03
	Environmental	
	Programs	
Issue RFP for Plan Administrator	Environmental	7/30/03
	Programs	
Execute Contract for Administrator	Environmental	10/30/03
	Programs	
Report on Annual Development	Community	6/30/04 and
_	Development	annually thereafter
Report on Annual Preserve Lands Point Balance	Contractor	10/31/04 and
-		annually thereafter
Report on Annual Fund Balance as an Element to	Finance	12/31/04 and
the City's Annual Financial Reporting		annually thereafter



AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSON, SIEGEL, McCLURE & FLEGEL, LLP

Agenda Item # 9
Prepared By:
(Title)
Submitted By:
City Manager

RECOMMENDED ACTIONS:

Authorize the City Manager to execute an Amended Agreement with the law firm of Jorgenson, Siegel, McClure & Flegel, LLP.

EXECUTIVE SUMMARY:

On February 24, 2005, the City entered into an agreement with the law firm of Jorgenson, Siegel, McClure & Flegel, LLP, in the amount of \$20,000 to provide general legal services. Said services include matters relating to the city's Below Market Rate Housing Program, land use issues, tort litigation and from time-to-time perform the duties of the Acting City Attorney. The current contract is insufficient to cover the fees and expenses necessary to continue representation of the City. The attached Amendment to Agreement is in the amount of \$125,000. It is anticipated that the additional \$105,000 will be sufficient to cover the anticipated fees and costs through the end of the current fiscal year. Therefore, staff is recommending that Council approve the attached Amendment to Agreement increasing the contract amount to \$125,000.

FISCAL IMPACT:

The cost of this agreement will be accommodated in the City Attorney's Office budget as part of a comprehensive set of adjustments to be made prior to the end of Fiscal Year 2004-2005.



ADOPT ORDINANCE NO. 1722, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF **CHAPTER** MORGAN HILL AMENDING 13.04 **(WATER** TITLE 13 (PUBLIC SERVICES) OF THE SYSTEM) OF MUNICIPAL CODE OF THE CITY OF MORGAN HILL WATER **METERS FOR MULTI-UNIT** REGARDING **DWELLINGS**

Agenda Item # 10
Prepared By:
Deputy City Clerk
Approved By:
City Clerk
Submitted By:
City Manager

RECOMMENDED ACTION(S):

<u>Waive</u> the Reading, and <u>Adopt</u> Ordinance No. 1722, New Series, and <u>Declare</u> That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On March 16, 2005, the City Council continued the introduction of this ordinance to April 6, 2005. At the April 6th meeting the City Council continued this item to the meeting of April 20th, at which meeting the City Council Introduced Ordinance No. 1722, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment is requested at this time.

ORDINANCE NO. 1722, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 13.04 (WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING WATER METERS FOR MULTI-UNIT DWELLINGS

WHEREAS, the City of Morgan Hill recognizes that there is a limited supply of water available to serve the residents and businesses of Morgan Hill; and,

WHEREAS, the City of Morgan Hill wishes to encourage the efficient use of water in order to optimize the use of the limited supply; and,

WHEREAS, independent research has concluded that residents of multi-family units that pay for their own water use an average of 15% less water;

WHEREAS, a necessary first step in getting multi-family residents to pay for their own water is to require the installation of dedicated water meters for each separate unit.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:

Section 1. Section 13.04.130 of Chapter 13.28 (Water Services) of Title13 (Public Services) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

13.04.130 Meters – Required - Installation

- A. All customers of the municipal water supply system must have a water meter properly installed to accurately measure the amount of water consumed in any period of time. The city shall furnish the required meters and installation shall be made by employees of the city; provided, however, that the reasonable cost of the meter and installation shall be charged to the customer.
- B. For the purposes of this Section, "all customers" is defined to include both residential and commercial customers.
 - 1. Residential customers include any and all residential developments including, but not limited to, single family homes, townhomes, condominiums, mobile home parks, each unit of multiunit residential developments, and each residential unit of mixed-use developments.
 - 2. Commercial customers include any single nonresidential building, any landscape only account, and any segment or portion of a nonresidential building that can be individually owned.
 - 3. The following types of customers are exempt from the requirements of this ordinance if they have already been constructed or have received a building permit prior to June 1, 2005: Townhomes, condominiums, mobile home parks, each unit of multiunit

residential developments, each unit of mixed-use developments, and any segment or portion of a nonresidential building that can be individually owned.

- C. The owner of a multiunit residential development or a mixed-use development that includes habitable dwellings, may, upon compliance with the following, install separate submeters to each residential unit in lieu of installing separate meters directly to the municipal water system.
 - 1. The owner must obtain a permit from the Public Works Department for the submeter system.
 - 2. Any submeters shall accurately and completely measure all water consumed from the municipal water system.
 - 3. The owner shall agree to charge the tenant of each unit a water utility charge strictly based on the consumption by the occupants of the unit.
 - 4. Installation, maintenance, and monitoring of the submeter system shall be the responsibility of the owner, and in no circumstances shall the City be responsible therefore.
 - 5. If any water conservation plan is implemented or imposed by the City, the owner shall be responsible for complying with any reductions required by such plan as measured by consumption on the meter(s) directly connected to the municipal water system.

Failure to abide by the above conditions, and/or any other conditions the City may impose, may result in revocation of any permit issued and/or other action as authorized by law.

<u>Section 2.</u> Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 3. Effective Date; Posting. This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 20^{th} Day of April 2005, and was finally adopted at a regular meeting of said Council on the 5^{th} Day of May 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: COUNCIL MEMBERS:

City of Morgan Hill

Page - 3 -

Ordinance 1722, New Series

Submitted for Approval: May 4, 2005

CITY OF MORGAN HILL SPECIAL CITY COUNCIL MEETING MINUTES – APRIL 20, 2005

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 7:10 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Grzan, Sellers, Tate and Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

This meeting was opened in conjunction with the Special-Regular City Council/Special RDA meeting of April 20, 2005. The one item on this agenda was heard by the City Council following the conclusion of the business on the Special-Regular City Council/Special RDA meeting agenda.

OTHER BUSINESS:

1. AGREEMENT WITH THE CITY ATTORNEY

No written staff report was provided in the agenda packet.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Council Member Grzan asked the City Manager if this settlement agreement will add to the City's deficit.

The City Manager responded that the recommendation is to amend the budget to increase the appropriation of Fund 795, the self insurance fund, to cover the amount listed in the settlement agreement.

Action: On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) Approved the Separation Agreement and Release of All

Claims.

City of Morgan Hill Special City Council Meeting Minutes – April 20, 2005 Page - 2 -

Action: On a motion by Council Member Tate, and seconded by Council Member Sellers, the City

Council unanimously (5-0) <u>Authorized</u> Mayor to Execute Agreement.

Action: On a motion by Council Member Tate, and seconded by Council Member Sellers, the City

Council unanimously (5-0) <u>Amended</u> the Budget as recommended by the City Manager to increase the appropriation of the self-insurance fund (Fund 795), to accommodate terms

of the agreement.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 10:47 p.m.

MOIRA MALONE, DEPUTY CITY CLERK

MINUTES RECORDED AND PREPARED BY:



CITY COUNCIL & REDEVELOPMENT AGENCY STAFF REPORT

MEETING DATE: May 4, 2005

Agenua Item # 12
Prepared By:
Finance Director
Submitted By:

City Manager

INVESTMENT POLICY UPDATE

RECOMMENDED ACTIONS:

- 1) Adopt the updated Investment Policy for the City.
- 2) Adopt the updated Investment Policy for the Redevelopment Agency

EXECUTIVE SUMMARY: Section 53646(a)(2) of the Government Code requires that "...the treasurer or chief fiscal officer may annually render to the legislative body of that local agency and any oversight committee... a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting. Any change in the policy shall also be considered by the legislative body of the local agency at a public meeting." In compliance with this requirement, staff is bringing the attached proposed separate investment policies for the City (Exhibit A) and Redevelopment Agency (Exhibit B) for your review. These policies were last updated and adopted by the City Council and Redevelopment Agency Board of Directors in June of 2004.

The Financial Policy Committee, which includes the City Treasurer, has reviewed and approved the attached policy. No substantial changes are recommended at this time. The only revisions are date changes and the addition of a new broker, Hoefer and Arnett, Inc., to the list of eligible brokers for purchases of Federal agency securities.

Staff will submit the new Investment Policy to the California Debt and Investment Advisory Committee following adoption.

FISCAL IMPACT: The attached proposed Investment Policy continues to provide that the first priority in investing City and Redevelopment Agency funds is the safety of those funds, the second priority is the liquidity of those funds, and the third priority is the yield on those investments. Safety is paramount and is reflected in the types of investments allowed under the policy.

EXHIBIT A

CITY OF MORGAN HILL

STATEMENT OF INVESTMENT POLICY

MAY 4, 2005

CITY OF MORGAN HILL Statement of Investment Policy

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CITY OF MORGAN HILL

Statement of Investment Policy

INTRODUCTION

The investment policy and practices of the City of Morgan Hill are based upon state law, city ordinances, prudent money management and the "prudent person" standards. The primary goals of this policy are to invest public funds to:

- 1. *Meet the daily cash flow needs of the City.*
- 2. Comply with all laws of the State of California regarding the investment of public funds.
- 3. Achieve a reasonable rate of return while minimizing the potential for capital losses arising from market changes or issuer default.
- 4. Encourage local economic benefits to the City of Morgan Hill residents and businesses by investing in local financial institutions, subject to legal control.

SCOPE

The investment policy applies to all funds under the control of the City Council of the City of Morgan Hill, including but not limited to the general revenues of the City, enterprise fund revenues and proceeds of bond sales, debt service revenues and trust funds in the custody of the City. These funds are accounted for in the comprehensive annual financial reports of the City of Morgan Hill.

INVESTMENT OBJECTIVES

A. Safety of Principal

Safety of principal is the City's foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure that capital losses resulting from institution default, broker-dealer default, or the erosion of market value 3

1. Credit risk, defined as the risk of loss due to failure of the issuer of a security, shall be mitigated by investing in only the highest quality securities (see authorized investments) and by diversifying the investment portfolio so that the failure of any one issuer would not unduly harm the City cash flow.

2. Market risk, defined as the risk of market value fluctuations due to overall changes in the general level of interest rates, shall be mitigated by structuring the portfolio so that securities mature at the same time that major cash outflows occur, this eliminating the need to sell securities prior to maturity; and by prohibiting the taking of short positions, that is, selling securities that the City does not own. It is explicitly recognized, however, that in a diversified portfolio, occasional measured losses may occur, and must be considered within the context of the overall investment return

B. <u>Liquidity</u>

Liquidity is the second most important objective of the investment program. The investment portfolio shall remain sufficiently liquid to enable the City to meet all operating requirements. At all times, at least 50% of the total portfolio shall be invested for periods of three years or less; at least 30% of the total portfolio shall be invested for two years or less; at least 20% of the total portfolio shall be invested for one year or less. At no time will a security in the portfolio mature in more than five years except bond reserve funds, bond escrow funds and any funds approved by the City Council to be appropriate for a longer period.

C. Yield

The City portfolio shall be invested to attain a market average rate of return through economic cycles, as long as it does not diminish the objectives of Safety and Liquidity. The market rate of return is defined as the average return on the one-year U.S. Treasury Bill. Whenever possible and in a manner consistent with the objectives of safety of principal and liquidity, a yield higher than the market rate of return shall be sought.

AUTHORITY TO INVEST FUNDS

The City Council has appointed the City Treasurer responsible for undertaking investment transactions on behalf of the City. Unless specifically designated by the City Council, the only officials authorized to undertake investment transactions on behalf of the City are the City Treasurer, Deputy City Treasurer and City Manager. The City Manager shall review all investment purchases before they occur. The City Treasurer and City Manager will observe, review and react to the changing conditions that affect the investment portfolio. They will meet on a regular basis to discuss current market conditions, future trends and how each of these affects the investment portfolio and the City. The City Treasurer and City Manager shall establish a system of controls to ensure compliance with the City's investment policy.

INTERNAL CONTROL

The City Treasurer is responsible for ensuring compliance with the City investment policies as well as establishing investment related internal controls designed to prevent losses due to fraud, employee error, misrepresenting by third parties, or unanticipated changes in financial markets.

ETHICS AND CONFLICTS OF INTEREST

Officer and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officers shall disclose any material financial interests in financial institutions that conduct business within this jurisdiction, and they shall further disclose any larger personal financial/investment positions that could be related to the performance of the City's portfolio. Employees and officers shall subordinate their personal investment transactions to those of the City, particularly with regard to the timing of purchases and sales, and shall avoid transactions that might impair public confidence in the City's ability to govern effectively.

EVALUATION OF INVESTMENTS

The actions of City investment officers in the performance of their duties as managers of public funds shall be evaluated using the following "prudent person" standard applied in the context of managing the overall portfolio:

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the professional management of their business affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

City investment officers acting in accordance with written policies and the "prudent person" standard and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that substantial deviations from expectations are reported by the Treasurer to the City Manager within three days of discovery. Mutually agreeable remedial action will be taken by the Treasurer and City Manager and reported to the City Council at their next regularly scheduled meeting.

AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The City shall transact business only with banks and savings and loans, and investment securities dealers which/who comply with Schedule III (Policy Criteria for Selecting Broker/Dealers) attached. The City Treasurer will maintain a list of financial institutions authorized to provide investment services. He will also maintain a list of approved security brokers/dealers selected by credit worthiness who are authorized to provide investment services to the City. The dealers must be primary dealers regularly reporting to the Federal Reserve Bank. Exceptions to the primary dealer rule may be made with the approval of the City Council, provided they are consistent with California Government Code Section 53601.5.

All primary financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply an audited financial statement, and U4 Form for the broker, completed broker/dealer questionnaire (see Schedule III) and certification of having read the

City's investment policy. All secondary financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply an audited financial statement, proof of National Association of Securities Dealers certification, trading resolution, proof of state registration, completed broker/dealer questionnaire (see Schedule 111), U4 Form for the broker and certification of having read the City's investment policy. The City Treasurer shall determine if they are adequately capitalized, make markets on securities appropriate to the City's needs and are recommended by managers of portfolios similar to the City. The City Treasurer shall submit his findings and recommendations to the City Council. As part of their annual review of the Investment Policy, the Council will determine which broker/dealers will be authorized to trade with the City.

An annual review of the financial condition and registration of qualified bidders will be conducted. A current audited financial statement is required to be on file for each financial institution and broker/dealer in which the City invests.

The City shall at least annually send a copy of the current investment policy to all financial institutions and broker/dealers approved to do business with the City. Confirmation of receipt of this policy shall be considered evidence that the dealer has read and understands the City's investment policy and will recommend and execute only transactions suitable for and in compliance with the City's investment policy.

AUTHORIZED INVESTMENTS

The City is authorized by California Government Code Section 53600, et. seq. to invest in specific types of securities. The City has further limited the types of securities in which we may invest. Any security not listed, is not a valid investment for the City. The concise list of approved securities is as follows:

- A. United States Treasury Bills, Bonds, and Notes, or those for which the full faith and credit of the United States are pledged for payment of principal and interest. There is no limitation as to the percentage of the portfolio which can be invested in this category.
- B. Obligations issued by United States Government Agencies such as, but not limited to, the Government National Mortgage Association (GNMA), the Federal Farm Credit Bank System (FFCB), the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Federal Home Mortgage Corporation (FHLMC), the Student Loan Marketing Association (SLMA), and the Tennessee Valley Authority (TVA). Although there is no percentage limitation of the dollar amount that can be invested in these issuers, the "prudent person" rule shall apply for any single agency name.
- C. The Local Agency Investment Fund (LAIF), established by the State Treasurer for the benefit of local agencies and identified under Government Code Section 16429.1 is authorized up to the maximum amount permitted by State Law.

- D. The City may place funds in inactive deposits with Banks and Savings and Loans with a branch within California that have a rating of at least "A-1" from the *Financial Directory* or an equivalent rating from another generally recognized authority on ratings, and have an Equity to Total Assets ratio of at least 4%. All deposits shall be secured in accordance with Sections 53651 and 53652 of the California Government Code and comply with Schedule I (Policy Statement of Collateralized Time Deposits) attached. If deposits are not collateralized, the maximum placed at any one institution will be \$100,000. The maximum amount of collateralized inactive deposits placed at any one institution shall not constitute more than 10% of the total assets of the institution or \$2,000,000, whichever is less, and shall not exceed the total shareholders' equity of the issuing institution.
- E. The City may invest in the Dreyfuss Treasury Cash Management Fund as an overnight sweep account in conjunction with contracting with South Valley National Bank for banking services.

INVESTMENT POOLS

The Local Agency Investment Fund (LAIF) is authorized under provisions in Section 16429.1 of the California Government Code. The City's participation in the pool was previously approved by the City Council. The City will investigate all local government investment pools (LGP) prior to investing and periodically thereafter while the City is invested in the pool.

SAFEKEEPING OF SECURITIES

To protect against potential losses by the collapse of individual securities dealers, all securities owned by the City shall be held in safekeeping by a third party bank trust department acting as agent for the City under the terms of a custody agreement executed by the bank and the City. All securities will be received and delivered using standard delivery-versus-payment (DVP) procedures. The third party bank trustee agreement must comply with Section 53608 of the California Government Code. No outside broker/dealer or advisor may have access to City funds, accounts or investments, and any transfer of funds to or through an outside broker/dealer must be approved by the City Treasurer.

DIVERSIFICATION

The City will diversify its investments by security type and investment. With the exception of bond reserve funds, bond escrow funds, and any other funds approved by the City Council, at all times at least 50% of the total portfolio shall mature in three years or less; at least 30% of the total portfolio shall mature in two years or less; at least 20% of the portfolio shall mature in one year or less.

MAXIMUM MATURITIES

The City will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, as approved by the City Council, the City will not directly invest in securities maturing more than five years from the date of purchase. Bond reserve funds, bond escrow funds, and any other funds approved by the City Council may be invested in

securities exceeding five years if the maturities of such investments are made to coincide as nearly as possible with the expected use of the funds.

BOND PROCEEDS

The City will direct the investment of proceeds on bonds issued as instructed in the bond indenture. Securities authorized by the bond indenture that are not authorized by the City's investment policy will only be used if they are specifically approved by the City Council. Unless otherwise approved by the City Council, all securities will be held in third-party safekeeping with the bond trustee, and all delivery-versus-payment rules will apply. Fees will be collected annually to compensate for administration costs.

REPORTING REQUIREMENTS

The City Treasurer shall render a report of investment activity to the City Council within 30 days following the end of the quarter. The report will include the type of investment, issuer, date of maturity, and par and dollar amount invested, on all securities, investments and monies held by the City. The report shall state market value and the source of the valuation, and state that the portfolio is in compliance with the policy or the manner in which it is not in compliance. The report will also include a statement denoting the ability to meet the City's expected expenditure requirements for the next six months or provide an explanation as to why sufficient money is not available. The report date will be the actual month-end date unless the last day of the month falls on a weekend or legal holiday. If the last day of the month is a weekend or legal holiday, the date of month-end report will be the last business day prior to the end of the month.

INVESTMENT POLICY ADOPTION

The City Treasurer shall submit an annual Statement of Investment Policy to the City Council for their approval. This statement shall be presented before June 30 of each year.

INVESTMENT POLICY REVIEW

The City's independent Certified Public Accountant shall annually review and make recommendations regarding the City investment policies to the extent considered necessary as required by generally accepted auditing standards as they relate to the annual financial audit which includes cash and investments.

CITY OF MORGAN HILL POLICY STATEMENT ON COLLATERALIZED TIME DEPOSITS SCHEDULE I

Before the Treasury can place a time deposit with a local bank or savings and loan, the following,

criteria must be met:

- 1. The bank must provide us with an executed copy of the "Contract for Deposit for Moneys" as specified in Section 53649 of the California Government Code.
- 2. The interest rate on the Time Certificate of Deposit must be competitive with rates offered by other banks and savings and loans and must exceed the interest rate for treasury bills for a similar maturity period.
- 3. For investments less than \$ 100,000, FDIC insurance will be sufficient without requiring any collateral to be pledged with the Federal Reserve to secure the public fund deposit.
- 4. For investments exceeding \$100,000, there may be a waiver of collateral for the first \$100,000 deposited, and all of the funds placed on deposit must be collateralized by 105% of U.S. Treasury or Federal Agency securities, or by 150% of mortgages having maturities less than five years in accordance with Section 53652 of the California Government Code. The City must receive confirmation that these securities have been pledged in repayment of the time deposit. The securities pledged must be maintained at a current market value 10% greater than the dollar amount of the deposit.
- 5. The City must be given a current audited financial statement for the financial year just ended as well as the most recent quarterly statement of financial condition. The financial reports must both include a "statement of financial condition" as well as an "income statement" depicting current and prior year operations.
- 6. The City will not place a fund deposit for more than \$2,000,000, or 10% of the assets of the institution, whichever is less.
- 7. The City must receive a certificate of deposit which specifically expresses the terns governing the transaction, (i.e., the period of time, name of depositor, interest rate, etc.).
- 8. All time certificates must have a maturity period not exceeding two years from the date of deposit with quarterly payments of interest based upon the stated interest rate.
- 9. The City must also receive a letter from the comptroller and/or treasurer of the bank at the time the deposit is made, that there is no known pending financial disclosure or public announcement of an adverse financial event involving the bank or savings and loan, nor is there any knowledge that a conflict of interest situation exists with any City official, officer or employee at the time the bank is receiving this deposit. The City has a fiduciary responsibility to make prudent investment of public funds, and to assure our investment practices are absent of any financial inducement or conflict in interest whatsoever.
- 10. Time deposits will only be made with qualified banks and savings and loans having branch office locations within Santa Clara County. However, time deposits with a bank or savings and loan must be centralized at one designated office location rather than making separate deposits with each branch office.

CITY OF MORGAN HILL POLICY CRITERIA FOR SELECTING BROKER/DEALERS SCHEDULE II

- 1. All primary financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply an audited financial statement, and U4 Form for the broker, completed broker/dealer questionnaire (made a part of this Schedule) and certification of having read the City's investment policy. All secondary financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply an audited financial statement, proof of National Association of Securities Dealers certification, trading resolution, proof of state registration, completed broker/dealer questionnaire (made a part of this Schedule), U4 Form for the broker and certification of having read the City's investment policy.
- 2. The net capital position of the firm shall be in excess of \$ 100 million.
- 3. The City Treasurer's intent is to enter into a long-term relationship. Therefore, the integrity of the firm and the personnel assigned to our account is of primary importance.
- 4. The firm must state in writing its willingness to be bound by the City's written Investment Policy Guidelines.
- 5. The firm must provide an active secondary market for the securities it sells.
- 6. The firm must specify the types of securities it specializes in and will be made available for our account.
- 7. It is important that the firm provide related services that will enhance the account relationship which could include:
 - a) An active secondary market for its securities.
 - b) Internal credit research analysis on commercial paper, banker's acceptances and other securities it offers for sale.
 - c) Be willing to trade securities on our portfolio.
 - d) Be capable of providing market analysis, economic projections, newsletters.
 - e) Provide market education on new investment products, security spread relationships, graphs, etc.
- 8. The firm must be willing to provide us annual financial statements.
- 9. If requested, the firm must be willing to provide us a list of local government clients or other references, particularly those client relationships established within the State of California

- 10. The City is prohibited from the establishment of a broker/dealer account for the purpose of holding the City's securities. All securities must be subject to delivery at the City's custodial bank.
- 11. Without exception, all transactions are to be conducted on a "'delivery vs. payment" basis.
- 12. The broker/dealer shall be headquartered or have a branch office in California- Except for the above, the City will not conduct security transactions with any firm located out of state.
- 13. The broker/dealer must have been in operation for more than 5 years, and must have net capital in excess of \$100 million.
- 14. No business relationship shall be established with firms engaged in the sale of "exotic" products. Exotic means "unusually high yields," no ready secondary market, "high price volatility" on the security.
- 15. The firm must be registered with the State of California's regulatory agency.
- 16. No broker/dealer or security firm shall be selected who has made a political contribution to the local treasurer or any member of the City Council or the Redevelopment Agency governing board or to any candidate for these offices.

Broker/Dealer Questionnaire

Nan	ne of Firm:				
Add	lress:				
Tele	ephone No.:				
	Primary re	presentative	Manager		
Nan Title Tele					
1.	Are you a recognized prima	ary dealer in Governme	ent securities?		
	()	Yes () No			
2.	If so, how long has your fin years.	m been a primary deal	er?		
3.	Are you a retail or institution	onal brokers?			
4.	What was your firm's total year?	volume in U. S. Gover	nment and agency s	securities 1	trading last
	Firm-wide \$	_			
	Your office \$	_			
5.	Which instruments are offered regularly by your trading desk?				
	() T-bills	() BA's (do	omestic)		
		() T-notes (foreign)	and bonds	() BA's
		() Agencie Commercial		()

	FFCB.FHLB, FNMA	()Bank C. D.'s	
		FHLMC, SLMA, TVA D.'s	()S & L C.
	WORLD BANK		
	() Repurchase Agreements	() Medium Term Corporate No	otes
6.	() Reverse Repurchase Agreements Identify all personnel who will be	()Mutual Funds (eligible for put trading with or quoting securities to	,
•	Name Titl		
7.	Please identify your most directly geographical area.	y comparable City/Local Agency c	lients in our
	Entity Contact Person	<u>Phone</u> <u>Client</u>	Since
8.	Is there anything in your background in the government securities business that makes you standout above the rest? Why should the City of Morgan Hill deal with you?		
9	Have any of your public sector clients ever sustained a loss on a securities transaction arising from a misunderstanding or misrepresentation of the risk characteristics of a particular instrument? If so, please explain.		
10.	Has any public sector client ever claimed in writing that your firm was responsible for investment losses? Explain.		
11.	Has your firm consistently complied with the Federal Reserve Bank's capital adequacy guidelines? Include certified documentation of your capital adequacy as measured by Federal Reserve standards.		
12.	Please provide certified financial firm's capitalization.	statements and other statements reg	garding your
13.	Please include samples of resear	ch reports that your firm regularly	supplies to

public sector clients.

- 14. Are you a Broker instead of a Dealer (i.e. you DO NOT own positions of securities)?
- 15. What reports, transactions, confirmations and paper trail would the City receive?
- 16. What training information would you provide to our employees and investment officers?
- 17. How many and what percentage of your transactions failed last month? Last year?
- 18. What portfolio information do you require from clients?

--CERTIFICATION--

I hereby certify that I have personally read the City of Morgan Hill's Investment Policy and the California Government Codes pertaining to the investments of the City of Morgan Hill, and have implemented reasonable procedures and a system of controls designed to preclude imprudent investment activities arising out of transactions conducted by our firm on behalf of the City of Morgan Hill, considering the City's investment objectives, strategies and risk constraints. We pledge to exercise due diligence in informing the City Treasury staff of all foreseeable risks associated with financial transactions conducted with our firm. I attest to the accuracy of our responses to the above questionnaire.

NOTE: Completion of this questionnaire is only part of the City of Morgan Hill's Certification process and DOES NOT guarantee that the applicant will be approved to do business with the City.

SIGNED

(Account Representative)

SIGNED

(Countersigned by Company President or person in charge of government securities operations.)

DATED

CITY OF MORGAN HILL

FIRMS AUTHORIZED TO CONDUCT INVESTMENT TRANSACTIONS SCHEDULE III

The City is authorized to conduct investment security transactions with the following investment firms and broker/dealers, many of which are designated by the Federal Reserve Bank as primary government dealers. Security transactions with firms, other than those appearing on this list, are prohibited.

A. Firms designated by the Federal Reserve Bank as Primary Government Dealers:

None

B. Other authorized firms:

Union Bank of California Fahnestock & Co., Inc. Hoefer & Arnett, Inc.

CITY OF MORGAN HILL

SCHEDULE IV

Authorized Investments Ranked by Authority and Degree of Risk May 4, 2005

AUTHORIZED INVESTMENTS	DIVERSIFICATION	PURCHASE RESTRICTIONS
U.S. TREASURY BILLS & NOTES	No Limit	No Limit
DDEVELICO TDE ACUDY CACH		
DREYFUSS TREASURY CASH	N. T	NI. I **4□
MANAGEMENT FUND	No Limit	No Limit□
U.S. GOVERNMENT AGENCIES	No Limit	No Limit
LOCAL AGENCY INVESTMENT FUND	No Limit	Max. Set by Gov't Code- currently \$40 m
		per acct.
TIME DEPOSITS	Max 5% of portfolio	Max \$2 million per institution Collateral =
	(excluding gov't agency and LAIF)	105% to 150%
REPURCHASE AGREEMENTS	Not Authorized	Not Authorized
MONEY MARKET MUTUAL FUNDS	Not Authorized	Not Authorized
BANKERS' ACCEPTANCES	Not Authorized	Not Authorized
COMMERCIAL PAPER	Not Authorized	Not Authorized
MEDIUM-TERM CORPORATE NOTES	Not Authorized	Not Authorized
NEGOTIABLE CD'S	Not Authorized	Not Authorized
REVERSE REPURCHASE	Not Authorized	Not Authorized
AGREEMENTS		
ASSET BACKED SECURITIES	Not Authorized	Not Authorized
STATE & LOCAL INDEBTEDNESS	Not Authorized	Not Authorized

GLOSSARY

AGENCIES: Federal agency securities.

ASKED: The price at which securities are offered. (The price at which a firm will sell a security to an investor.)

BANKERS' ACCEPTANCE (BA): A draft or bill or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BASIS POINT: One one-hundredth of a percent (i.e., 0.01%).

BID: The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.)

BROKER: A broker brings buyers and sellers together for a commission. He does not take a position.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large denomination CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COUPON: a) The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. b) A certificate attached to a bond evidencing interest due on a payment date.

DEALER: A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

DEBENTURE: A bond secured only by the general credit of the issuer.

DELIVERY VERSUS PAYMENT: There are two methods of delivery of securities: delivery versus payment and delivery versus

receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

DISCOUNT SECURITIES: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value (e.g., U.S. Treasury Bills).

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FEDERAL CREDIT AGENCIES: Agencies of the Federal government set up to supply credit to various classes of institutions (e.g. S&L's, Small business firms, students, farmers, farm cooperatives, and exporters).

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A Federal agency that insures bank deposits, currently up to \$100,000 per deposit.

FEDERAL FUNDS RATE: The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB): The institutions that regulate and lend to savings and loan associations. The Federal Home Loan Banks play a role analogous to that played by the Federal Reserve Banks vis-a-vis member commercial banks.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA): FNMA, like GNMA was chartered under the Federal

National Mortgage Association Act in 1938. FNMA is a Federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL **OPEN** MARKET **COMMITTEE** (**FOMC**): Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven-member Board of Governors in Washington, D.C.; 12 regional banks and about 5,700 commercial banks are member of the system.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA. VA or FMHM mortgages. The term "passthroughs" is often used to describe Ginnie Maes.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

LOCAL GOVERNMENT INVESTMENT POOL: The aggregate of all funds from political subdivisions that are placed in the custody of the State Treasurer for investment and reinvestment.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MARKET REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase reverse repurchase agreements that establish each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See "Asked" and "Bid".

OPEN MARKET OPERATIONS:

Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit: Sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PORTFOLIO: Collection of securities held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker/dealers, banks and a few unregulated firms.

PRUDENT PERSON RULE: An investment standard. In some states, the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state--the so-called "legal list". In other states, the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity; on a bond, the current income return.

REPURCHASE AGREEMENT (RP or REPO): a holder of securities sells these securities to an investor with an agreement to purchase them at a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money, that is, increasing bank reserves.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES & EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities

transactions by administering securities legislation.

SEC RULE 15C3-1: See "Uniform Net Capital Rule".

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three month, six months or one year.

TREASURY BOND: Long-term U.S. Treasury securities having initial maturities of more than 10 years.

TREASURY NOTES: Intermediate-term coupon bearing U.S. Treasury securities having initial maturities of from one year to ten years.

UNIFORM NET CAPITAL **RULE:** Securities and Exchange Commission requirement that member firms as well as nonmember broker/dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans commitments to purchase securities, on reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

YIELD: The rate of annual income return on an investment, expressed as a percentage.

(a) INCOME YIELD is obtained by dividing the current dollar income by the current market price for the security. (b) NET YIELD or YIELD TO MATURITY is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

EXHIBIT B

MORGAN HILL REDEVELOPMENT AGENCY

STATEMENT OF INVESTMENT POLICY

May 4, 2005

MORGAN HILL REDEVELOPMENT AGENCY Statement of Investment Policy

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MORGAN HILL REDEVELOPMENT AGENCY

Statement of Investment Policy

INTRODUCTION

The investment policy and practices of the Morgan Hill Redevelopment Agency are based upon state law, city ordinances, prudent money management and the "prudent person" standards. The primary goals of this policy are to invest public funds to:

- 1. *Meet the daily cash flow needs of the Redevelopment Agency.*
- 2. Comply with all laws of the State of California regarding the investment of public funds.
- 3. Achieve a reasonable rate of return while minimizing the potential for capital losses arising from market changes or issuer default.
- 4. Encourage local economic benefits to the City of Morgan Hill residents and businesses by investing in local financial institutions, subject to legal control.

SCOPE

The investment policy applies to all funds under the control of the Morgan Hill Redevelopment Agency, including but not limited to the general revenues of the Agency and proceeds of bond sales. These funds are accounted for in the comprehensive annual financial reports of the Morgan Hill Redevelopment Agency.

INVESTMENT OBJECTIVES

A. Safety of Principal

Safety of principal is the Agency's foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure that capital losses resulting from institution default, broker-dealer default, or the erosion of market value are avoided. The Agency shall seek to preserve principal by mitigating the two types of risk: credit risk and market risk.

- 1. Credit risk, defined as the risk of loss due to failure of the issuer of a security, shall be mitigated by investing in only the highest quality securities (see authorized investments) and by diversifying the investment portfolio so that the failure of any one issuer would not unduly harm the Agency's cash flow.
- 2. Market risk, defined as the risk of market value fluctuations due to overall changes in the general level of interest rates, shall be mitigated by structuring the portfolio so that securities mature at the same time that major cash outflows occur, this eliminating the need to sell securities prior to maturity; and by prohibiting the taking

of short positions, that is, selling securities that the Agency does not own. It is explicitly recognized, however, that in a diversified portfolio, occasional measured losses may occur, and must be considered within the context of the overall investment return

B. Liquidity

Liquidity is the second most important objective of the investment program. The investment portfolio shall remain sufficiently liquid to enable the Agency to meet all operating requirements. At all times, at least 50% of the total portfolio shall be invested for periods of three years or less; at least 30% of the total portfolio shall be invested for two years or less; at least 20% of the total portfolio shall be invested for one year or less. At no time will a security in the portfolio mature in more than five years except bond reserve funds, bond escrow funds and any funds approved by the Agency Board to be appropriate for a longer period.

C. Yield

The Agency portfolio shall be invested to attain a market average rate of return through economic cycles, as long as it does not diminish the objectives of Safety and Liquidity. The market rate of return is defined as the average return on the one-year U.S. Treasury Bill. Whenever possible and in a manner consistent with the objectives of safety of principal and liquidity, a yield higher than the market rate of return shall be sought.

AUTHORITY TO INVEST FUNDS

The Redevelopment Agency Board have appointed the Director of Finance responsible for undertaking investment transactions on behalf of the Agency. Unless specifically designated by the Agency Board, the only officials authorized to undertake investment transactions on behalf of the Agency are the Director of Finance, Deputy Treasurer and City Manager. The City Manager shall review all investment purchases before they occur. The Director of Finance and City Manager will observe, review and react to the changing conditions that affect the investment portfolio. They will meet on a regular basis to discuss current market conditions, future trends and how each of these affects the investment portfolio and the Agency. The Director of Finance and City Manager shall establish a system of controls to ensure compliance with the Agency's investment policy.

INTERNAL CONTROL

The Director of Finance is responsible for ensuring compliance with the Agency investment policies as well as establishing investment related internal controls designed to prevent losses due to fraud, employee error, misrepresenting by third parties, or unanticipated changes in financial markets.

ETHICS AND CONFLICTS OF INTEREST

Officer and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair

their ability to make impartial investment decisions. Employees and investment officers shall disclose any material financial interests in financial institutions that conduct business within this jurisdiction, and they shall further disclose any larger personal financial/investment positions that could be related to the performance of the Agency's portfolio. Employees and officers shall subordinate their personal investment transactions to those of the Agency, particularly with regard to the timing of purchases and sales, and shall avoid transactions that might impair public confidence in the Agency's ability to govern effectively.

EVALUATION OF INVESTMENTS

The actions of Agency investment officers in the performance of their duties as managers of public funds shall be evaluated using the following "prudent person" standard applied in the context of managing the overall portfolio:

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the professional management of their business affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

Agency investment officers acting in accordance with written policies and the "prudent person" standard and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that substantial deviations from expectations are reported by the Director of Finance to the City Manager within three days of discovery. Mutually agreeable remedial action will be taken by the Director of Finance and City Manager and reported to the Agency Board at their next regularly scheduled meeting.

AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The Agency shall transact business only with banks and savings and loans, and investment securities dealers which/who comply with Schedule III (Policy Criteria for Selecting Broker/Dealers) attached. The Director of Finance will maintain a list of financial institutions authorized to provide investment services. He will also maintain a list of approved security brokers/dealers selected by credit worthiness who are authorized to provide investment services to the Agency. The dealers must be primary dealers regularly reporting to the Federal Reserve Bank. Exceptions to the primary dealer rule may be made with the approval of the Agency Board, provided they are consistent with California Government Code Section 53601.5.

All primary financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply an audited financial statement, and U4 Form for the broker, completed broker/dealer questionnaire (see Schedule III) and certification of having read the Agency's investment policy. All secondary financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply an audited financial statement, proof of National Association of Securities Dealers certification, trading resolution, proof of state registration, completed broker/dealer questionnaire (see Schedule 111), U4 Form for the broker and certification of having read the Agency's investment policy. The Director of Finance shall determine if they are adequately capitalized, make markets on securities appropriate to the Agency's needs and

are recommended by managers of portfolios similar to the Agency. The Director of Finance shall submit his findings and recommendations to the Agency Board. As part of their annual review of the Investment Policy, the Board will determine which broker/dealers will be authorized to trade with the Agency.

An annual review of the financial condition and registration of qualified bidders will be conducted. A current audited financial statement is required to be on file for each financial institution and broker/dealer in which the Agency invests.

The Agency shall at least annually send a copy of the current investment policy to all financial institutions and broker/dealers approved to do business with the Agency. Confirmation of receipt of this policy shall be considered evidence that the dealer has read and understands the Agency's investment policy and will recommend and execute only transactions suitable for and in compliance with the Agency's investment policy.

AUTHORIZED INVESTMENTS

The Agency is authorized by California Government Code Section 53600, et. seq. to invest in specific types of securities. The Agency has further limited the types of securities in which we may invest. Any security not listed, is not a valid investment for the Agency. The concise list of approved securities is as follows:

- A. United States Treasury Bills, Bonds, and Notes, or those for which the full faith and credit of the United States are pledged for payment of principal and interest. There is no limitation as to the percentage of the portfolio which can be invested in this category.
- B. Obligations issued by United States Government Agencies such as, but not limited to, the Government National Mortgage Association (GNMA), the Federal Farm Credit Bank System (FFCB), the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Federal Home Mortgage Corporation (FHLMC), the Student Loan Marketing Association (SLMA), and the Tennessee Valley Authority (TVA). Although there is no percentage limitation of the dollar amount that can be invested in these issuers, the "prudent person" rule shall apply for any single agency name.
- C. The Local Agency Investment Fund (LAIF), established by the State Director of Finance for the benefit of local agencies and identified under Government Code Section 16429.1 is authorized up to the maximum amount permitted by State Law.
- D. The Agency may place funds in inactive deposits with Banks and Savings and Loans with a branch within California that have a rating of at least "A-1" from the *Financial Directory* or an equivalent rating from another generally recognized authority on ratings, and have an Equity to Total Assets ratio of at least 4%. All deposits shall be secured in accordance with Sections 53651 and 53652 of the California Government Code and comply with Schedule I (Policy Statement of

Collateralized Time Deposits) attached. If deposits are not collateralized, the maximum placed at any one institution will be \$100,000. The maximum amount of collateralized inactive deposits placed at any one institution shall not constitute more than 10% of the total assets of the institution or \$2,000,000, whichever is less, and shall not exceed the total shareholders' equity of the issuing institution.

E. The City may invest in the Dreyfuss Treasury Cash Management Fund as an overnight sweep account in conjunction with contracting with South Valley National Bank for banking services.

INVESTMENT POOLS

The Local Agency Investment Fund (LAIF) is authorized under provisions in Section 16429.1 of the California Government Code. The Agency's participation in the pool was previously approved by the Redevelopment Agency Board. The Agency will investigate all local government investment pools (LGP) prior to investing and periodically thereafter while the Agency is invested in the pool.

SAFEKEEPING OF SECURITIES

To protect against potential losses by the collapse of individual securities dealers, all securities owned by the Agency shall be held in safekeeping by a third party bank trust department acting as agent for the Agency under the terms of a custody agreement executed by the bank and the Agency. All securities will be received and delivered using standard delivery-versus-payment (DVP) procedures. The third party bank trustee agreement must comply with Section 53608 of the California Government Code. No outside broker/dealer or advisor may have access to Agency funds, accounts or investments, and any transfer of funds to or through an outside broker/dealer must be approved by the Director of Finance.

DIVERSIFICATION

The Agency will diversify its investments by security type and investment. With the exception of bond reserve funds, bond escrow funds, and any other funds approved by the Agency Board, at all times at least 50% of the total portfolio shall mature in three years or less; at least 30% of the total portfolio shall mature in two years or less; at least 20% of the portfolio shall mature in one year or less.

MAXIMUM MATURITIES

The Agency will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, as approved by the Agency Board, the Agency will not directly invest in securities maturing more than five years from the date of purchase. Bond reserve funds, bond escrow funds, and any other funds approved by the Agency Board may be invested in securities exceeding five years if the maturities of such investments are made to coincide as nearly as possible with the expected use of the funds.

BOND PROCEEDS

The Agency will direct the investment of proceeds on bonds issued as instructed in the bond indenture. Securities authorized by the bond indenture that are not authorized by the Agency's investment policy will only be used if they are specifically approved by the Agency Board. Unless otherwise approved by the Agency Board, all securities will be held in third-party safekeeping with the bond trustee, and all delivery-versus-payment rules will apply. Fees will be collected annually to compensate for administration costs.

REPORTING REQUIREMENTS

The Director of Finance shall render a report of investment activity to the Agency Board within 30 days following the end of the quarter. The report will include the type of investment, issuer, date of maturity, and par and dollar amount invested, on all securities, investments and monies held by the Agency. The report shall state market value and the source of the valuation, and state that the portfolio is in compliance with the policy or the manner in which it is not in compliance. The report will also include a statement denoting the ability to meet the Agency 's expected expenditure requirements for the next six months or provide an explanation as to why sufficient money is not available. The report date will be the actual month-end date unless the last day of the month falls on a weekend or legal holiday. If the last day of the month is a weekend or legal holiday, the date of month-end report will be the last business day prior to the end of the month.

INVESTMENT POLICY ADOPTION

The Director of Finance shall submit an annual Statement of Investment Policy to the Redevelopment Agency Board for their approval. This statement shall be presented before June 30 of each year.

INVESTMENT POLICY REVIEW

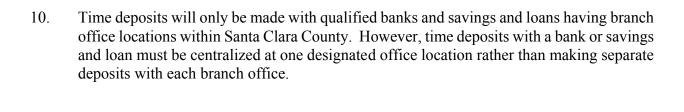
The Agency's independent Certified Public Accountant shall annually review and make recommendations regarding the Agency investment policies to the extent considered necessary as required by generally accepted auditing standards as they relate to the annual financial audit which includes cash and investments.

MORGAN HILL REDEVELOPMENT AGENCY

POLICY STATEMENT ON COLLATERALIZED TIME DEPOSITS SCHEDULE I

Before the Treasury can place a time deposit with a local bank or savings and loan, the following, criteria must be met:

- 1. The bank must provide us with an executed copy of the "Contract for Deposit for Moneys" as specified in Section 53649 of the California Government Code.
- 2. The interest rate on the Time Certificate of Deposit must be competitive with rates offered by other banks and savings and loans residing in Santa Clara County and must exceed the interest rate for treasury bills for a similar maturity period.
- 3. For investments less than \$100,000, FDIC insurance will be sufficient without requiring any collateral to be pledged with the Federal Reserve to secure the public fund deposit.
- 4. For investments exceeding \$100,000, there may be a waiver of collateral for the first \$100,000 deposited, and all of the funds placed on deposit must be collateralized by 105% of U.S. Treasury or Federal Agency securities, or by 150% of mortgages having maturities less than five years in accordance with Section 53652 of the California Government Code. The Agency must receive confirmation that these securities have been pledged in repayment of the time deposit. The securities pledged must be maintained at a current market value 10% greater than the dollar amount of the deposit.
- 5. The Agency must be given a current audited financial statement for the financial year just ended as well as the most recent quarterly statement of financial condition. The financial reports must both include a "statement of financial condition" as well as an "income statement" depicting current and prior year operations.
- 6. The Agency will not place a fund deposit for more than \$2,000,000, or 10% of the assets of the institution, whichever is less.
- 7. The Agency must receive a certificate of deposit which specifically expresses the terms governing the transaction, (i.e., the period of time, name of depositor, interest rate, etc.).
- 8. All time certificates must have a maturity period not exceeding two years from the date of deposit with quarterly payments of interest based upon the stated interest rate.
- 9. The Agency must also receive a letter from the comptroller and/or Director of Finance of the bank at the time the deposit is made, that there is no known pending financial disclosure or public announcement of an adverse financial event involving the bank or savings and loan, nor is there any knowledge that a conflict of interest situation exists with any Agency official, officer or employee at the time the bank is receiving this deposit. The Agency has a fiduciary responsibility to make prudent investment of public funds, and to assure our investment practices are absent of any financial inducement or conflict in interest whatsoever.



MORGAN HILL REDEVELOPMENT AGENCY

POLICY CRITERIA FOR SELECTING BROKER/DEALERS SCHEDULE II

- 1. All primary financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply an audited financial statement, and U4 Form for the broker, completed broker/dealer questionnaire (made a part of this Schedule) and certification of having read the Agency 's investment policy. All secondary financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply an audited financial statement, proof of National Association of Securities Dealers certification, trading resolution, proof of state registration, completed broker/dealer questionnaire (made a part of this Schedule), U4 Form for the broker and certification of having read the Agency 's investment policy.
- 2. The net capital position of the firm shall be in excess of \$ 100 million.
- 3. The Director of Finance's intent is to enter into a long-term relationship. Therefore, the integrity of the firm and the personnel assigned to our account is of primary importance.
- 4. The firm must state in writing its willingness to be bound by the Agency 's written Investment Policy Guidelines.
- 5. The firm must provide an active secondary market for the securities it sells.
- 6. The firm must specify the types of securities it specializes in and will be made available for our account.
- 7. It is important that the firm provide related services that will enhance the account relationship which could include:
 - a) An active secondary market for its securities.
 - b) Internal credit research analysis on commercial paper, banker's acceptances and other securities it offers for sale.
 - c) Be willing to trade securities on our portfolio.
 - d) Be capable of providing market analysis, economic projections, newsletters.
 - e) Provide market education on new investment products, security spread relationships, graphs, etc.
- 8. The firm must be willing to provide us annual financial statements.
- 9. If requested, the firm must be willing to provide us a list of local government clients or other references, particularly those client relationships established within the State of California.
- 10. The Agency is prohibited from the establishment of a broker/dealer account for the purpose of holding the Agency's securities. All securities must be subject to delivery at the Agency's

custodial bank.

- 11. Without exception, all transactions are to be conducted on a "'delivery vs. payment" basis.
- 12. The broker/dealer shall be headquartered or have a branch office in California- Except for the above, the Agency will not conduct security transactions with any firm located out of state.
- 13. The broker/dealer must have been in operation for more than 5 years, and must have net capital in excess of \$100 million.
- 14. No business relationship shall be established with firms engaging in the sale of "exotic" products. Exotic means "unusually high yields," no ready secondary market, "high price volatility" on the security.
- 15. The firm must be registered with the State of California's regulatory agency.
- 16. No broker/dealer or security firm shall be selected who has made a political contribution to the local Director of Finance or any member of the Redevelopment Agency governing board or to any candidate for these offices.

Broker/Dealer Questionnaire

Name of Firm: Address:				
Telepl	Γelephone No.:			
	Primary repr	esentative	Manager	
Name Title: Telepl	: hone No:			
1.	Are you a recognized primary dealer in Government securities?			
	()Yes () No			
2.	If so, how long has your firm been a primary dealer? years.			
3.	Are you a retail or institutional brokers?			
4.	What was your firm's total volume in U. S. Government and agency securities trading las year?			
	Firm-wide \$			
	Your office \$			
5.	Which instruments are offered regularly by your trading desk?			
	() T-bills	() BA's (do	omestic)	
	() T-notes and bonds	() BA's (fo	reign)	
	() Agencies (specify)	() Commer	cial Paper	
	FFCB.FHLB, FNMA	()Bank C. 1	D.'s	

	FHLMC, SLMA, IVA	()S & L	C. D.'s	
	WORLD BANK			
	() Repurchase Agreements	() Mediu	ım Term Corporate Not	tes
	() Reverse Repurchase Agreements	()Mutua	l Funds (eligible for pu	blic investment)
6.	Identify all personnel who will be trading with or quoting securities to the City.			
	<u>Name</u>	<u>Title</u>	<u>Phone</u>	
7.	Please identify your most direct area.	etly comparable Ci	ty/Local Agency clients	
	Entity Contact	t Person	<u>Phone</u>	Client Since
8.	Is there anything in your back standout above the rest? Why	~		•
9	Have any of your public sector clients ever sustained a loss on a securities transaction arising from a misunderstanding or misrepresentation of the risk characteristics of a particular instrument? If so, please explain.			
10.	Has any public sector client ever claimed in writing that your firm was responsible for investment losses? Explain.			
11.	Has your firm consistently complied with the Federal Reserve Bank's capital adequacy guidelines? Include certified documentation of your capital adequacy as measured by Federa Reserve standards.			
12.	Please provide certified financial statements and other statements regarding your firm' capitalization.			
13.	Please include samples of rese	arch reports that y	our firm regularly supp	lies to public sector

- 14. Are you a Broker instead of a Dealer (i.e. you DO NOT own positions of securities)?
- 15. What reports, transactions, confirmations and paper trail would the City receive?
- 16. What training information would you provide to our employees and investment officers?
- 17. How many and what percentage of your transactions failed last month? Last year?
- 18. What portfolio information do you require from clients?

--CERTIFICATION--

I hereby certify that I have personally read the Morgan Hill Redevelopment Agency's Investment Policy and the California Government Codes pertaining to the investments of the Morgan Hill Redevelopment Agency, and have implemented reasonable procedures and a system of controls designed to preclude imprudent investment activities arising out of transactions conducted by our firm on behalf of the Morgan Hill Redevelopment Agency, considering the Agency's investment objectives, strategies and risk constraints. We pledge to exercise due diligence in informing the Agency Treasury staff of all foreseeable risks associated with financial transactions conducted by our firm. I attest to the accuracy of our responses to the above questionnaire.

NOTE: Completion of this questionnaire is only part of the Morgan Hill Redevelopment Agency's Certification process and DOES NOT guarantee that the applicant will be approved to do business with the Agency.

SIGNED

(Account Representative)

SIGNED

(Countersigned by Company President or person in charge of government securities operations.)

DATED

MORGAN HILL REDEVELOPMENT AGENCY

FIRMS AUTHORIZED TO CONDUCT INVESTMENT TRANSACTIONS SCHEDULE III

The Agency is authorized to conduct investment security transactions with the following investment firms and broker/dealers, many of which are designated by the Federal Reserve Bank as primary government dealers. Security transactions with firms, other than those appearing on this list, are prohibited.

A. Firms designated by the Federal Reserve Bank as Primary Government Dealers:

None

B. Other authorized firms:

Union Bank of California Fahnestock & Co., Inc. Hoefer & Arnett, Inc.

SCHEDULE IV

MORGAN HILL REDEVELOPMENT AGENCY Authorized Investments Ranked by Authority and Degree of Risk May 4, 2005

AUTHORIZED INVESTMENTS	DIVERSIFICATION	PURCHASE RESTRICTIONS
U.S. TREASURY BILLS & NOTES	No Limit	No Limit
DREYFUSS TREASURY CASH MANAGEMENT FUND	No Limit	No Limit
U.S. GOVERNMENT AGENCIES	No Limit	No Limit
LOCAL AGENCY INVESTMENT FUND	No Limit	Max. Set by Gov't Code- currently \$40 m per acct.
TIME DEPOSITS	Max 5% of portfolio (excluding gov't agency and LAIF)	Max \$2 million per institution Collateral = 105% to 150%
REPURCHASE AGREEMENTS	Not Authorized	Not Authorized
MONEY MARKET MUTUAL FUNDS	Not Authorized	Not Authorized
BANKERS' ACCEPTANCES	Not Authorized	Not Authorized
COMMERCIAL PAPER	Not Authorized	Not Authorized
MEDIUM-TERM CORPORATE NOTES	Not Authorized	Not Authorized
NEGOTIABLE CD'S	Not Authorized	Not Authorized
REVERSE REPURCHASE AGREEMENTS	Not Authorized	Not Authorized
ASSET BACKED SECURITIES	Not Authorized	Not Authorized
STATE & LOCAL INDEBTEDNESS	Not Authorized	Not Authorized

GLOSSARY

AGENCIES: Federal agency securities.

ASKED: The price at which securities are offered. (The price at which a firm will sell a security to an investor.)

BANKERS' ACCEPTANCE (BA): A draft or bill or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BASIS POINT: One one-hundredth of a percent (i.e., 0.01%).

BID: The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.)

BROKER: A broker brings buyers and sellers together for a commission. He does not take a position.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large denomination CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COUPON: a) The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. b) A certificate attached to a bond evidencing interest due on a payment date.

DEALER: A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

DEBENTURE: A bond secured only by the general credit of the issuer.

DELIVERY VERSUS PAYMENT: There are two methods of delivery of securities: delivery **FEDERAL NATIONAL MORTGAGE**

versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

DISCOUNT SECURITIES: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value (e.g., U.S. Treasury Bills).

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FEDERAL CREDIT AGENCIES: Agencies of the Federal government set up to supply credit to various classes of institutions (e.g. S&L's, Small business firms, students, farmers, farm cooperatives, and exporters).

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A Federal agency that insures bank deposits, currently up to \$100,000 per deposit.

FEDERAL FUNDS RATE: The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB):

The institutions that regulate and lend to savings and loan associations. The Federal Home Loan Banks play a role analogous to that played by the Federal Reserve Banks vis-a-vis member commercial banks.

ASSOCIATION (FNMA): FNMA, like GNMA

was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a Federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest

FEDERAL OPEN MARKET COMMITTEE

(FOMC): Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven-member Board of Governors in Washington, D.C.; 12 regional banks and about 5,700 commercial banks are member of the system.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FMHM mortgages. The term "pass-throughs" is often used to describe Ginnie Maes.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size

can be done at those quotes.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP): The aggregate of all funds from political subdivisions that are placed in the custody of the State Director of Finance for investment and reinvestment.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MARKET REPURCHASE AGREEMENT: A

written contract covering all future transactions between the parties to repurchase reverse repurchase agreements that establish each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See "Asked" and "Bid".

OPEN MARKET OPERATIONS: Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit: Sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PORTFOLIO: Collection of securities held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker/dealers, banks and a few unregulated firms.

PRUDENT PERSON RULE: An investment standard. In some states, the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state--the so-called "legal list". In other states, the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity; on a bond, the current income return.

REPURCHASE AGREEMENT (RP or REPO): a holder of securities sells these securities to an investor with an agreement to purchase them at a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money, that is, increasing bank reserves.

SAFEKEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES & EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

SEC RULE 15C3-1: See "Uniform Net Capital Rule".

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three month, six months or one year.

TREASURY BOND: Long-term U.S. Treasury securities having initial maturities of more than 10 years.

TREASURY NOTES: Intermediate-term coupon

bearing U.S. Treasury securities having initial maturities of from one year to ten years.

UNIFORM NET CAPITAL RULE: Securities and Exchange Commission requirement that member firms as well as nonmember broker/dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called *net capital rule* and *net capital ratio*. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, on reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

YIELD: The rate of annual income return on an investment, expressed as a percentage. (a) INCOME YIELD is obtained by dividing the current dollar income by the current market price for the security. (b) NET YIELD or YIELD TO MATURITY is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

Submitted for Approval: May 4, 2005

CITY OF MORGAN HILL JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES – APRIL 20, 2005

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Tate and Mayor/Chairman Kennedy Later Arrival: Council/Agency Members Grzan (6:05 p.m.) and Sellers (6:20 p.m.)

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Agency Secretary Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)

Case Name: General Lighting Service, Inc. v. Wells Construction Group, et al. [Consolidated

Actions

Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: City of Morgan Hill v. Hernandez

Case Number: Santa Clara County Superior Court, Case No. 1-04-CV-020063

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

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Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:02 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:07 p.m.

CLOSED SESSION ANNOUNCEMENT

Acting City Attorney/Agency Counsel Siegel announced that the City Council was given direction under anticipated litigation, but there are no reportable actions.

SILENT INVOCATION

Mayor/Chairman Kennedy led the silent invocation.

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Charles Weston, as Chairman of Independence Day Incorporated, led the Pledge of Allegiance,

RECOGNITIONS

Mayor Kennedy presented Certificates of Recognition to members of the Day Worker Center Committee and the workers who contributed to the construction and completion of the new Day Worker Center facility in Morgan Hill. Those receiving certificates were: the staff at Associated Concrete, and at Bejarano Electric; Hedy Chang, Kevin Costa of K.C. Heating; Dave Delmue of Danny Fence; Steve Dudek of E-Wire Solutions; Bob Gomez; Chris Hauge of West Hills Community Church; Rich Heiser of Trinchero Construction; Mike Johnson of Johnson Ace Hardware; Tom Lopez of Day and Nite Towing; Rod Martin of Dividend Homes; Bill McClintock of MH Engineering; Ced Martin; Dick Oliver of Dividend Homes; the staff at Quality Plumbing; Scott Schilling of South Valley Developers; Jim Schipsi and Dave Sornberger of Trinchero Construction; Paul Swing of Techcon; Jim Tarp of JET Electric; Charles Weston of Weston-Miles Architects; and Julian Mancias.

Julian Mancias reported that the Day Worker Center is now open and is being organized; and it should be up and running fully within a few more days. He also presented the City with Certificates of Recognition for three city staff members, Ken De Luna, Jim Rowe, and Larry Ford, for their outstanding work in assisting with the Day Worker Center. He introduced the new director of the Day Worker Center, Ms. Eloisa Gamez.

Ms. Gamez reported that they are currently publicizing that the Center is now open and asking community agencies such as churches and the newspaper to get the word out to the public. They already have someone to teach the English as a second language classes, and a nurse to train in nutrition and health.

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Mr. Mancias announced that there will be a Cinco de Mayo celebration held at the Community Park and invited all to attend.

Mayor Kennedy presented Certificates of Recognition to the citizen members of the Urban Limit Line Committee, and thanked them for their significant contribution to the future of the city over the last two years through their work on this committee. The citizen members of the Committee that were presented Certificates of Recognition were Michele Beasley, Tim Chiala, Jim DiVittorio, Placido Forestieri; Rocke Garcia, Mark Grzan, Janice Guglielmo, Alex Kennett, Joe Mueller, Richard Palmisano, Art Puliafico, Bruce Tichinin, and George Thomas. Mayor Kennedy also recognized and thanked former Council Member Hedy Chang for her work on this Committee.

Ms. Julie Osborne, of South Valley Disposal, introduced the Business Recycler of the Year - Fox Racing, and the Residential Recycler of the Year - The Becker Household; and presented them with a Recycler of the Year plaque from South Valley Disposal.

PROCLAMATIONS

Mayor Kennedy proclaimed April as National Volunteer Month. The proclamation will be forwarded to the Volunteer Center of Silicon Valley.

PRESENTATIONS

County Supervisor Don Gage, serving as the Chairman of the Housing Trust of Santa Clara County, thanked the Council for their support of the Housing Trust; and he gave a presentation on the Housing Trust of Santa Clara County and some of the projects they have completed in Morgan Hill. He thanked the Council for their consideration of the item on tonight's agenda, stating that he is hopeful that they will continue to support the Trust. He stated that many other counties and cities are trying to duplicate the methods used here, and because they have not had the same kind of support from their legislative bodies, they have found it difficult to get started in their communities. He thanked the Council for their vision and support.

Ms. Rosemary Kamei, of the Santa Clara Valley Water District, gave a presentation on the Water Resources Protection Collaborative project. She stated that the District is working on multiple projects with the City of Morgan Hill, and that she was here tonight to share the progress that has been made on the Collaborative effort to protect water resources. She expressed thanks to Jim Ashcraft, Director of Public Works, for his hard work on the project. She distributed printed information to the Council regarding the Upper Llagas Creek Project progress report for March 2005, an update on the Perchlorate issue dated April 19, 2005, and a fact sheet on AB1590 Property Tax Revenue Allocations bill.

Ms. Kamei introduced Ms. Ann Draper, of the Santa Clara Valley Water District, and Jim Ashcraft, Director of Public Works, who provided a PowerPoint presentation of the Progress Report on the Water Resources Collaborative project. They reported on the status of the development of standard practices for environmental stewardship of water throughout the County of Santa Clara; as well as the

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development of basic guidelines for early consultation by the cities of the water district in the development process for all the cities in the County.

Mayor Kennedy asked them about a report he had hear that the Corp of Engineers had recently changed the criteria for the PL566 project. Ms. Kamei responded that in reviewing the economics of the project, the Corp had found that the ratio of the economics had turned out not to be as high as they had anticipated. She stated that her staff was scheduled to meet with the Corp next week to work out what can be done, and she will have more information to report at the next quarterly update in late May or June.

Mayor Kennedy asked Mr. Ashcraft to investigate the possibility of holding a special meeting due to the urgency of the issue.

CITY COUNCIL REPORT

Council Member Grzan reported on his involvement in the Utilities and Environment Subcommittee. He stated that water conservation issues they had discussed resulted in the Water Submetering Ordinance scheduled for consideration on tonight's agenda. This Subcommittee has also been reviewing the perchlorate issue and water quality; and he was happy to report that the water quality in Morgan Hill wells was given a "non-detect" for perchlorate levels for the last quarter.

He also is on the Financial Policy Subcommittee, but has not yet had a meeting. One of the issues they will be reviewing is the possible survey of the community regarding the financial situation of the city.

CITY MANAGER REPORT

City Manager Tewes stated he had no report this evening.

CITY ATTORNEY REPORT

Acting City Attorney Siegel stated he had no report this evening.

OTHER REPORTS

City Treasurer Roorda presented the City Treasurer's Quarterly Report. He stated that typically the General Fund revenues tend to appear lopsided, as the largest portion comes in at the end of the year. He did note there has been an increase in our sales tax revenue and that expenses appear to be running about 2% less than expected. The anticipated increased expenses in the Police Department and pensions are now starting to hit. The cash position of the General Fund is still strong, with more than \$9 million in fund reserves. The General Fund balance is allowing the City to move cautiously and adjust as they go along. There has been some increase in property tax over last year in the shift from the vehicle tax. He stated that our sales tax revenues have increased 6.6% this year, and encouraged Morgan Hill citizens to shop locally in order to increase this number. This growth in sales tax revenue will help resolve some of the budget issues as we go forward.

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He stated that recent expenses may cause the revision of the anticipated \$1.9 million deficit for this year unless the revenues are received as projected.

In response to a Council inquiry from Council Member Grzan, Mr. Roorda stated that the current financial situation is not drastically off from the projected 5-year plan; and if we stick with that plan, the city can sustain long enough to allow the Council and the community to deal with the imbalance and come up with a plan for new revenue sources. Without new revenue sources, a reduction in services may need to be considered.

City Manager Tewes stated that his recommended budget will be presented to the Council on May 14. At that time the Council will be reviewing the current year's revenue and expenses as well as the projections for the coming year. Though he is still working on the budget, he does not believe the current year's deficit will reach the levels of Mr. Roorda's concern.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

- Mr. Bruce Tichinin addressed the Council regarding the City of Morgan Hill v. Vierra, as the Attorney for Howard Vierra. He provided the Council members with a letter, and asked the Council to respond to the letter. He noted that the court date scheduled for this case is currently June 8; and though he understands that the city does not yet have an attorney to advise them, he is concerned that the city is not going to be ready at that time. He asked that the council take whatever action is necessary to proceed with this hearing on June 8; and to please move this matter along as quickly as possible.
- Mayor Kennedy announced that the Sister City Committee of Morgan Hill and the County of Santa Clara/Province of Florence, Italy Sister County Commission extended an invitation to all to attend the Italian Pranzo in the Vineyard to be held on May 5, 2005 at 6:00 p.m. at the Guglielmo Winery in Morgan Hill. This is to honor the official delegation from Florence, Italy.

No further comments being offered, the Mayor closed the public comment.

City Council Action

CONSENT CALENDAR:

City Manager Tewes stated that there were several agreements on the consent calendar this evening, and that as part of the Council motion to approve the consent calendar, the term "approved as to form by the City Attorney" should be considered added to all these agreements.

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Action:

On a motion by Council Member Tate and seconded by Council Member Sellers, and including the language of "approved as to form by the City Attorney" for all agreements, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-14, as follows:

1. MARCH 2005 FINANCE & INVESTMENT REPORT

Action: Accepted and Filed Report.

2. <u>AWARD CONTRACT FOR CONSTRUCTION OF INTERIM OVERFLOW PARKING LOT AT THE AQUATICS CENTER</u>

<u>Action:</u> 1) <u>Awarded</u> Contract for Construction of the Interim Overflow Parking Lot at the Aquatics Center to Trinchero Construction in the Amount of \$50,477; Subject to Review and Approval by the City Attorney; and 2) <u>Authorized</u> Expenditure of up to 10% (\$5,048) for Construction Contingency.

3. AGREEMENTS WITH PACIFIC MUNICIPAL CONSULTANTS, AND THE INSTITUTE & CORRALITOS CREEK LLC REGARDING IMPLEMENTATION OF THE INSTITUTE GOLF COURSE PUD MITIGATION MONITORING AND REPORTING PLAN (MMRP)

<u>Action:</u> 1) <u>Authorized</u> the City Manager to Execute the Agreement between the City of Morgan Hill and Pacific Municipal Consultants, Subject to Review and Approval by the City Attorney; and 2) <u>Authorized</u> the City Manager to Execute the Agreement between the City of Morgan Hill and The Institute & Corralitos Creek, LLC; Subject to Review and Approval by the City Attorney.

4. <u>APPROVAL OF INSTALLATION OF PERCHLORATE REMOVAL SYSTEM FOR NORDSTROM WELL FOR SUMMER OF 2005</u>

Action: Authorized Issuance of Purchase Order to US Filter in the Amount of \$158,082.

- 5. THIRD AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM

 Action: Authorized the City Manager to Execute a Third Amendment to Agreement with the Strombotne Law Firm.
- 6. <u>SECOND AMENDMENT TO AGREEMENT WITH MACLELLAN WOLFSON ASSOCIATES</u>

<u>Action:</u> <u>Authorized</u> the City Manager to Execute a Second Amended Agreement with MacLellan Wolfson Associates.

7. <u>AGREEMENT WITH THE LAW FIRM OF JORGENSON, SIEGEL, McCLURE & FLEGEL, LLP</u>

<u>Action:</u> <u>Authorized</u> the City Manager to Execute an Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP. (Vierra Case)

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8. <u>AGREEMENT WITH THE LAW FIRM OF JORGENSON, SIEGEL, McCLURE & FLEGEL, LLP</u>

<u>Action:</u> <u>Authorized</u> the City Manager to Execute an Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP. (Berkman, et al Case)

9. <u>AMENDMENT TO CONTRACT FOR CONSULTANT PLANNING SERVICES</u>

<u>Action:</u> <u>Authorized</u> the City Manager to Execute a Contract Amendment in an Amount Not to Exceed \$37,637 for Contract Planning Services.

10. ADOPT ORDINANCE NO. 1719, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1719, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 2.22.010 (Establishment of boards and commissions) OF Chapter 2.22 (Master Provisions for Boards and Commissions) OF TITLE 2 (Administration and Personnel) DELETING REFERENCE TO THE PERSONNEL COMMISSION AND RENAMING THE LIBRARY COMMISSION.

11. ADOPT ORDINANCE NO. 1720, NEW SERIES

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1720, New Series, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO SECTION 18.76.250.H.1.B OF THE SIGN CODE TO INCREASE THE MAXIMUM ALLOWABLE SIGN AREA FOR ON-SITE FREESTANDING SIGNS ON LOTS FIVE ACRES OR GREATER IN SIZE IN COMMERCIAL AND INDUSTRIAL PLANNED UNIT DEVELOPMENTS FROM 48 SQUARE FEET TO 50 SQUARE FEET (ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR CO.)

12. ADOPT ORDINANCE NO. 1721, NEW SERIES, AS AMENDED

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1721, New Series, As Amended, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 6.36 (ANIMALS AND LAND USE) OF TITLE 6 (ANIMALS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS; AND REQUIREMENT FOR RESIDENTIAL PRIVATE LIVESTOCK PERMIT).

- 13. <u>APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF APRIL 6, 2005</u>
- 14. APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF APRIL 11, 2005

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City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Council/Agency Member Tate and seconded by Council/Agency Member

Sellers, the City Council/Agency Board unanimously (5-0) <u>Approved</u> Consent Calendar

Items 15-16, as follows:

15. MORGAN HILL COURTHOUSE AGREEMENT

<u>Action: Authorized</u> the Executive Director/City Manager to Execute, making Minor Modifications as needed and Subject to Review and Approval as to form by the City Attorney/Agency Counsel, an Agreement with the County of Santa Clara Regarding Clarification of the County's Responsibilities under the Existing Ground Lease.

16. <u>APPROVED SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF APRIL 6, 2005</u>

Redevelopment Agency Action

CONSENT CALENDAR:

<u>Action:</u> On a motion by Agency Member and seconded by Agency Member, the Agency Board unanimously (5-0) <u>Approved</u> Consent Calendar Items 17-22, as follows:

17. MARCH 2005 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT Action: Accepted and Filed Report.

18. THIRD QUARTER REPORT FROM THE CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT PARTNERSHIP

<u>Action:</u> 1) <u>Accepted</u> Report; and 2) <u>Authorized</u> the Executive Director to Amend the Agreement, as necessary, to Allow for Monthly Invoicing of Services; Subject to Review and Approval by Agency Counsel.

19. <u>CASA DIANA MIXED-USE PROJECT - LAND ACQUISITION AND MASTER PLANNING LOAN</u>

<u>Action:</u> <u>Authorized</u> the Executive Director to do Everything Necessary and Appropriate to Negotiate, Execute and Implement a Loan Agreement with EAH, Inc., Subject to Review and Approval by Agency Counsel, for a Loan of Up to \$2,165,000 for EAH, Inc. to Acquire Two Parcels of the Casa Diana Housing Commercial Mixed-Use Project, and to Master Plan the Entire Area.

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20. AGREEMENT WITH RICHARDS, WATSON & GERSHON

<u>Action: Authorized</u> the Executive Director to do Everything Necessary to Prepare and Execute an Agreement with Richards, Watson & Gershon (RWG) in an Amount not to Exceed \$35,000 for Services Associated with Evaluating the Feasibility of Amending the Redevelopment Plan; Subject to Review and Approval by Agency Counsel.

21. HOUSING TRUST OF SANTA CLARA COUNTY

<u>Action: Authorized</u> the Executive Director to do Everything Necessary to Prepare and Execute the Required Agreements with the Housing Trust of Santa Clara County (HTSCC) to Commit \$200,000 in Agency 20% Housing Set Aside Funds to the HTSCC over a Three-Year Period; Subject to Review and Approval by Agency Counsel.

22. HABITAT FOR HUMANITY – HOUSING PROJECT

<u>Action: Authorized</u> the Executive Director to Execute any and all Documents Necessary, Subject to Review and Approval of Agency Counsel, to Grant Silicon Valley Habitat for Humanity (Habitat) an Amount Not to Exceed \$560,000 for the Construction of a Six-Unit Affordable Ownership Housing Project, Subject to Review and Approval by Agency Counsel.

City Council Action

OTHER BUSINESS:

23. <u>URBAN LIMIT LINE-GREENBELT STUDY: REVIEW OF ADVISORY</u> COMMITTEE RECOMMENDATIONS

This item was heard out of order, following Items 26 and 27.

Project Planner David Bischoff presented the staff report as provided in the agenda packet. He noted that there were several supplemental documents that had been provided to the Council on the dais. He stated that the staff would be happy to return to the Council at a later date with a complete analysis of the various proposals received this evening from the public on the ULL study.

Mayor Kennedy opened the public comment.

Mr. Andy Faber, representing Kevin Lai, spoke on this property owner's behalf regarding the development of their property on Tilton and Hale. He provided council with a written statement of his request for consideration. He expressed concern about the permanency of the ULL boundary; and stated that he felt this was a harsh situation for a property in such a developable location. He requested that staff consider including this property in the ULL, or at least changing the text to reflect a less permanent designation so that the property is not left unable to be developed.

Michele Beasley from Greenbelt Alliance, stated this committee never reached consensus and approving this would not be in the best interest of citizens of Morgan hill. She feels that the minority report should be reviewed to eliminate contentious points. Requested the Council send it back to the ULL to study

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the minority report. If the Council goes ahead with approval, she would like to see the Advisory Report and Minority Report kept as equal to the ULL report.

Brenda Torres, Executive Director of Santa Clara Valley Audubon Society, spoke on behalf of their nearly 200 members who are residents of Morgan Hill. She expressed strong support for the minority report.

Jeffrey B. Hare, speaking on behalf of the Nick Sr. and Jackie Borina Trust, stated that the Committee Report, the minority report and the late submitted alternative proposal do not address the issues that need to be reconciled with the LAFCO regulations. Also adequate funding sources are not identified. Improperly shifts the burden of projects to people who have no opportunity to vote on this or have much say on what is going on. SE quadrant residents are not able to vote on this issue as they are not residents of Morgan Hill. These proposals can put property owners into limbo for decades. At a minimum the Council has to address these issues.

Steve White, President of Anchor Point Academies, stated that he feels he has negotiated a win-win situation with the committee. He is essentially in agreement with the final report. He is asking the Council to reconsider one portion of report to allow exchange of some of their land with some of the city land to allow a home to be built in the area of the water tank. As it is now they are left with an isolated piece of property. Second point – the report asks to bring in a road to allow access to their property. They have suggested something that the Planning Department should review to see if there is significant community benefit to the city in their proposal.

Alex Kennett stated that there are several issues to be addressed. For example, the city requiring the county to get local planning approval for structures that would be built in the county and visible to those in the city. Also, fair market for land owners should be addressed. The alternate plan allows them to negotiate as early as 2007 with the city. Now people feel there is no advantage to being outside the line. He also served on the Gilroy agricultural mitigation committee, and in that experience they were able to keep working on it until all were satisfied with the result. He hopes to achieve more of a consensus on this report. It would be good to take what time is needed to get it right.

Council Member Grzan noted that the revised map, submitted as a supplemental document, is more conservative than what is in the staff report.

Mr. Kennett responded that the map is slightly different, in that it brings the line on Hill road closer to what the ULL Committee had recommended.

Mr. Kennett stated that he proposes that whatever is decided be taken to voters in 2006 so that subsequent Councils could not arbitrarily change the ULL to protect the future.

Brian Schmidt from Committee for Green Foothills stated he supports Mr. Kennett's recommendation to send it back to the ULL subcommittee for further study. He said that regarding the comments made earlier on LAFCO and funding, that is correct for the main committee report, but not for minority report. The Minority report can go ahead without any annexation changes that have to go to LAFCO, until

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much further down the line. The Minority report also provides a funding mechanism. He feels that the Minority report needs to be brought back for further discussion.

Tim Chiala stated that his major problem with the Minority report is that the land value would have to be lowered in order for them to be compensated. The ULL subcommittee used real numbers. He is disappointed that the environmental community used scare tactics to get support.

Mr. M.L. Taggart, stated he is upset that the council keeps talking "city", when the Baird ranch is in county and they can't vote. How can the city come and tell them what they can do. Feels it is unfair.

Bruce Tichinin stated he hopes that Mr. Chiala can keep farming here forever. He wanted to address the issue of the land losing value. His plan in the Minority report was to prevent that from happening. He wanted to get full market value to land owners

Manou Mobidshalin stated he owns 460 acres next to Oakridge, which was already divided into 23 parcels when he bought it. He did not develop it because he did not think it would be an attractive development. He is willing to change the design plans to try and make something beautiful. He is located in county, but wants to make it beautiful for the city. He stated he just wanted to get this on the record.

No further public comment being offered, the public comment was closed.

Mayor Kennedy disclosed that he had met with Mr. White, Mr. Conte, Mr. Mobidshalin, and Mr. Faber briefly at various times. As the Chairman of the ULL Committee he feels that a lot of the suggestions in the alternate proposal should be incorporated because there are some good suggestions being put forward. He recommended that the Council proceed with the staff recommendations; and also to direct the staff to return to the Council in June with an analysis of the all the various proposals that have been submitted. Then, if the Council wants the ULL Committee to take further action, that would be the time for Council to direct that.

Council Member Grzan stated that he has been a member of committee for over 2 years, and can assure everyone that the members worked hard and passionately for the concerns of Morgan Hill and the preservation of its rural character. They did not achieve consensus, which made it difficult to present a final report. The Minority report deserves some significant credibility, and if it goes back to staff it should receive equal weight in evaluation, and a matrix should be drawn comparing the strengths and weaknesses of both. There should be a simple review and an honest review. He wanted to add his comments to the Mayor's recommendation, but would like to reserve further discussion until after staff comes back with further analysis.

Council Member Tate disclosed that he met with Mr. Kennett, Mr. Faber and Mr. Lai. He agrees that further work needs to be done to consider all that is before them tonight. He sees many benefits and advantages to the city with the alternative proposal, and wants to see both sides of the issue before making a decision. He is unsure if an in-depth analysis is a staff function or should be done by the group that has worked on the study.

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Mayor Kennedy stated that is why he recommended that staff look at all proposals in detail. As of tonight, they have not had time to perform an extensive review. He recommends that the Council give them time to do that and bring it back. If the Council believes at that time they need to have a committee work on it more, that would be the time for that decision.

Council Member Carr asked how the Planning Commission and current Council Subcommittees are to be involved in the process.

Mayor Kennedy responded that is one of reasons that the staff recommended process is so important. The Planning Commission would be involved in most of the actions that will need to be taken after the final adoption of the ULL. He asked the Director of Community Development Molloy-Previsich to speak to that issue.

Director of Community Development Molloy-Previsich stated that staff is viewing the work product as a planning feasibility study. When directed to come back with steps for implementation, they would come back with identification of particular projects needed to be done to implement, most likely in June.

Council Member Carr stated that he feels it is premature to send anything to the Planning Commission at this time.

Ms. Molloy-Previsich stated that she agreed with Council Member Carr, and that she would like to have the opportunity to break down the process into action steps to move into the implementation phases, with time lines, public participation, discussions, etc. before the Planning Commission becomes involved.

Council Member Sellers asked for a clarification as to whether the staff involved from this point forward would be the Planning staff.

Ms. Molloy-Previsich stated that her intent is to become more involved along with others on her staff, as well as David Bischoff, whose position is proposed to continue in next year's budget. Her approach will be a team approach.

Council Member Grzan requested further analysis and a clear comparison on the two proposals that have been made.

Ms. Molloy-Previsich stated that her intention would be to analyze the requests that have been received tonight.

Council Member Sellers stated that the Council has received a lot to absorb tonight, and a thorough staff analysis needs to be brought back to the Council. He noted that there is a learning curve for the Council members so that all five will be able to deal with only a fully mature idea. He suggested bringing this to another "sub-committee" type entity to get the questions answered and issues resolved before returning it for Council consideration. He also expressed concern for those who reside outside of the city limits

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who feel vulnerable to the decisions being made by the city, and he asked that, while meeting the expressed desire of the city's residents, they also be kept in mind because they have a lot at stake. He suggested giving consideration to the formation of a sub-committee during the time the staff is doing their analysis, so they would be ready when the staff returns in June and they can be given a specific charge at that time. He stated that he is not comfortable with the other staff recommendations on the market analysis and the work plan item. He also reported that he had held meetings with Mr. Tichinin, Mr. Schmidt and Mr. Jacobi.

The Mayor commented on Mr. Taggart's concerns about his interests as a non-resident of the city who has no vote on what is being decided for him. The Mayor reported that when the ULL committee was formed, this was recognized as a major concern, so in order to address this issue, over half of the members of the ULL were persons living outside of the city limits. The city does have a Sphere of Influence and the County has assigned the city the responsibility for planning use of that land. A great effort was made to involve those residing in the sphere of influence in this process.

Mayor Kennedy recommended that the Council take action on the staff recommended actions, as stated, and also analyze the alternatives proposed.

Council Member Tate stated that he agrees on moving forward with the staff recommendations. He also wants to give the ULL committee an opportunity to try and reach a consensus and finish what they started.

Council Member Grzan noted that this is an historical undertaking dealing with the preservation of open space and greenbelt that will have an impact on the residents of Morgan Hill for generations to come. We have an opportunity that most cities around Morgan Hill do not have, and he wants to be careful to understand all the issues and move forward cautiously. He feels that all the members of the Council need to be well informed on all the issues involved and proceed with care.

Council Member Carr disclosed that he had conversations with Mr. Schmidt, Mr. Tichinin. He expressed his thanks to all the ULL Committee members, and all who have followed their work with interest, for all their hard work and input. He stated he does not feel an urgency to solve this issue tonight or in the immediate future, and wants to take time to work through some of the issues. Taking a little longer can only help to come up with a better product. He would like to see an adjustment to the staff recommended actions. He is O.K. with the land market analysis being in the budget, but wants to discuss when that will be done. He would like to see a staff analysis and a work plan, and a comparison of the proposals would be helpful to him. He also stated that he sees three plans to be compared, not just two; and he wants to be able to look at all three of them. He requested that the staff also provide their input on how the Planning Commission, any subcommittees and the ULL Committee will be utilized in the future.

Mayor Kennedy made a motion to proceed with the staff recommended actions, and include a comparison and evaluation of all three proposals –the ULL Committee recommendations, the Kennett, Tichinin & Beasley proposal, and the proposals by the property owners of the Anchor Point and the Lai property.

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Council Member Tate seconded the motion with the understanding that this information will be brought back to the Council in June for implementation at that time.

Council Member Carr emphasized that all three plans receive equal comparison and analysis.

<u>Action:</u> On a motion by Mayor Kennedy and seconded by Council Member Tate, the City Council unanimously (5-0) **Received** the Urban Limit Line Advisory Committee's Final Report.

Action: On a motion by Mayor Kennedy and seconded by Council Member Tate, the City Council unanimously (5-0) <u>Directed</u> Staff to Include an Industrial Land Market Analysis as a Work Plan Item in the Fiscal Year 2005/2006 City Budget.

Action: On a motion by Mayor Kennedy and seconded by Council Member Tate, the City Council unanimously (5-0) <u>Directed</u> Staff to prepare an equal evaluation and comparison of all three proposals presented to the City Council tonight — the ULL Committee recommendations, the Kennett, Tichinin & Beasley proposal, and the proposals by the property owners of the Anchor Point and the Lai property - and return to the Council in June with this comparison analysis and recommendations for an action plan to move the Urban Limit Line-Greenbelt Program forward into the environmental review and implementation process.

City Council Action

PUBLIC HEARINGS:

24. WATER CONSERVATION SUBMETERING ORDINANCE (Continued from April 6, 2005) Ordinance No. 1722, New Series

Tony Eulo presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) <u>Waived</u> the Reading in Full of the Ordinance to Amend Chapter 13.04 of the Municipal Code.

Action: On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council Introduced Ordinance by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 13.04 (WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES) OF THE MUNICIPAL

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CODE OF THE CITY OF MORGAN HILL REGARDING WATER METERS FOR MULTI-UNIT DWELLINGS, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

25. SOLID WASTE MANAGEMENT RATE ADJUSTMENT Resolution No. 5901

Tony Eulo presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) Adopted the Refuse Rate Resolution.

City Council Action

OTHER BUSINESS: (CONTINUED)

Council Member Tate, as a member of the IDI Board, excused himself from participation in Items 26 and 27 and stepped down from the dais.

Mayor Kennedy noted that a request had been made to hear items 26 and 27 out of order immediately after the Consent Calendar items. There was no objection from the Council; items 26 and 27 were heard immediately following the consent calendar. Item 27 was heard first, and then item 26; followed by a joint Council discussion and decision on both items.

26. AGREEMENT BETWEEN THE CITY AND INDEPENDENCE DAY, INC. (IDI) TO CO-SPONSOR THE JULY FOURTH CELEBRATIONS

(Item 26 and the Council discussion occurred after the presentation of item 27.)

There was no oral staff report presented on this item.

Ms. Daryl Manning provided a PowerPoint presentation on the 4th of July IDI celebration. She stated that IDI was requesting \$11,000 in funding support from the city.

Mayor Kennedy opened the public comment.

No public comment being offered, the public comment was closed.

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Council discussion of item 26:

Council Member Grzan stated that the Independence Day event has been a wonderful event for the city for many years, and makes Morgan Hill unique from other communities. He expressed his support for the funds being requested.

Council Member Sellers stated that he has served on the boards of both IDI and the Mushroom Mardi Gras and that both are very worthy events. He also stated that he is very happy that the Mushroom Mardi Gras will be downtown this year. He is interested in figuring out how to help the Mardi Gras, and perhaps be a sponsor, but that the Council has made an implied commitment to IDI early on, and that their budget and planning has been based on that implied commitment. If Mardi Gras is given funding, it should be in addition to, and not instead of, funding of IDI.

Council Member Carr suggested that the Council determine a combined ceiling of dollars that can be divided between the two. He suggested that the Community and Economic Development Committee be directed to find a way to divide a specified amount between the two organizations.

Mayor Kennedy supported this idea as a very good suggestion to meet the needs of both of these very worthy organizations.

Council Member Sellers agreed with Mr. Carr's suggestion, and stated that a special meeting of the Community and Economic Development Committee was scheduled in the near future, and this could be added to the agenda.

Council Member Carr stated his desire to formulate a motion, but requested input on what the amount should be for the total available funds. He asked if it should be set at \$21,000.

Council Member Sellers stated that at least \$5,000 should be given to the Mardi Gras, and that may be all that the city can afford this year.

Mayor Kennedy noted that there is an issue of precedence to be considered, as venues such as the Taste of Morgan Hill have not been provided with support in the past. He requested that the issue of precedence and fairness be considered, and felt that a funding cap of \$15,000 would be appropriate for the Community and Economic Development Committee to divide among IDI and the Mardi Gras.

Council Member Sellers stated that it is important to include the specific use of these types of funds in the budget discussions this year.

Council Member Grzan asked where the funds would come from if we exceed the budget. In response, he was told that this would be a determination of the Community and Economic Development Committee as they reviewed this request.

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Council Member Carr stated that the Committee will explore the question of what returns the city can expect on their investment in these events, and how to capture this income for use as resources for other events.

Mayor Kennedy requested a determination of what the criteria will be for providing assistance, what the city can expect in return, and whether their need for support will phase out.

Council Member Sellers stated that the Community and Economic Development Committee should be able to return to the Council with their recommendation by the first meeting in May.

Action:

On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (4-0 with Tate absent) <u>Directed</u> the Community and Economic Development Committee to review the requests for funding submitted by IDI and the Mushroom Mardi Gras, and determine the division of \$16,000 in funding between the two organizations, presenting their recommendations to the City Council at the meeting of May 4, 2005.

Council Member Tate returned to the dais after the conclusion of business on items 26 and 27.

City Council and Redevelopment Agency Action

OTHER BUSINESS:

27. <u>REQUEST FOR SPONSORSHIP OF THE 26TH ANNUAL MORGAN HILL MUSHROOM MARDI GRAS EVENT</u>

(Item 27 was heard prior to Item 26)

There was no oral staff report presented on this item.

Ms. Sunday Minnich, spoke on behalf of the Mushroom Mardi Gras, and reported that the festival will be moved to the downtown area this year. She stated that once they have established themselves in this new location, they will no longer need financial assistance from the city. She also noted that they were not aware that their request would create a conflict with the funding of IDI, so she wanted to make it clear that any amount of funding the city feels they can afford would be greatly appreciated. The reason they have come to the city for assistance is that they will not be able to fence the Mardi Gras and charge a gate fee this year, and they need assistance to alleviate the loss of this income. Their expenses have been reduced in their move to downtown this year by not having to pay for fencing and not recruiting "name" entertainment.

Ms. Minnich reported that the city does receive financial benefits from the Mardi Gras in the form of increased sales tax and hotel tax revenues. This year they expect over 100 vendors to participate, and some of the hotels have reported they are already filling up for this event in May. Local vendors are given preference and a discounted rate, and many use the event for fund raising purposes. The

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Downtown Association has officially supported and endorsed the Mardi Gras and are partners with them.

Council Member Grzan expressed his hope that they will be able to increase their revenues to make up for their loss of the gate fee.

No further comments.

Council consideration continued with Item 26.

Action: (See action listed under Item 26, above)

City Council Action

OTHER BUSINESS: (CONTINUED)

28. <u>ADOPTION OF ETHICS POLICY FOR CITY COUNCIL, COMMISSIONERS, BOARD MEMBERS, AND COMMITTEE MEMBERS</u>

City Manager Tewes presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Council Member Grzan stated that he is concerned about the phrase "I am impartial when making decisions" contained in the Expressions of Core Values column of the chart provided in the staff report. He stated that when he feels passionate about a subject being considered, he cannot say that he is impartial because he has core values that drive him to make his decisions.

Acting City Attorney Siegel explained that there are times when the Council has to be impartial when they are in an adjudicating position, (i.e., when hearing appeals).

Council Member Tate explained that the recommended policy is based on a consensus of a small subset of what was covered in the discussions of the Subcommittee. The recommendation to adopt this policy is just a starting point, and this policy should be given to the members of the boards, commissions, and committees for their input and comments. This is meant to be a "living" document that can be changed to fit needs as they arise. The policy should be reviewed at least once a year, and be re-committed to each year to keep it fresh and relevant.

Council Member Grzan suggested having this annual review be a part of the Council retreat. He agreed with the idea of gathering input from the members of the various boards, commissions, and committees so they can be a part of the process as well.

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Council Member Sellers stated that ethics are not possible to put down on paper, and the point is missed when an attempt is made to codify them. The true meaning of being positive, inclusive and above board is lost in the process. The true test is not to adhere to every line, but that good ethics happen because that is how we do things in the community. He agreed that there needs to be a regular review.

<u>Action:</u> On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) **Adopted** the Ethics Policy.

Action: On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) <u>Directed</u> Staff to Distribute Ethics Policy to all Commissioners, Board Members, and Committee Members; <u>Solicit</u> Input, and <u>Report</u> Back to City Council

Action: On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) <u>Directed</u> Staff to Provide Training on the Ethics Policy to all Commissioners, Board Members, and Committee Members, following City Council Approval of the Finalized Version of the Ethics Policy

Action: On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) <u>Directed</u> staff to schedule an annual review and update of the Ethics Policy.

29. <u>RECONSIDERATION OF FISCAL YEAR 2005-2006 OPERATING AND CAPITAL IMPROVEMENT BUDGET SCHEDULE</u>

Mayor Kennedy suggested rescheduling the budget workshop to Friday, June 10.

City Manager Tewes stated that the impact on staff will depend on what the Council requests of staff at the workshop. If the Council makes significant changes at the workshop there would not be time to prepare before the budget adoption is required.

Council Member Grzan suggested that if the Council could get the budget documents soon enough before the workshop, it might help.

The City Manager responded that he is required to deliver the budget on May 15, and he will need all that time to prepare.

Council Member Sellers stated that he is concerned about the staff being impacted negatively by the change to the June 10 date for the workshop.

Council Member Carr stated that the presentation by the staff is the most valuable to him, but that he would need to check his schedule to see if he has a conflict caused by June 10 being the last day of school.

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It was discussed and rejected to divide the budget presentations into two days, doing CIP and Operating Budget on different days.

Mayor Kennedy asked Council Member Carr to check his June 10 commitments so the Council can discuss and decide this issue at the next Council meeting.

<u>Action:</u> On a motion by Mayor Kennedy and seconded by Council Member Grzan, the City Council unanimously (5-0) <u>Continued</u> this item to May 4, 2005.

30. <u>AWARD CONTRACT FOR CONSTRUCTION OF INDOOR RECREATION CENTER</u> (Continued from April 6, 2005)

Director of Public Works Ashcraft presented the Supplemental staff report as provided to the City Council at this meeting. He asked the Council to consider approving all the recommendations in the supplemental staff report, including awarding the bid.

Council Member Grzan questioned staff on the revenue projections and what population they are based upon. He also expressed a concern about a partnership with the YMCA causing an increase in costs.

Recreation and Community Services Division Manager Spier responded that they are based on the Sports Management Group study, and include about 20% from San Martin. She also stated that the fees are lower than the YMCA fees.

City Manager Tewes added that, based on the study done by the consultant of comparable facilities and communities, there is no reason to believe that the fees would not be affordable to our citizens.

Council Member Carr commented that the Public Safety and Community Services Committee has directed staff to speak with the YMCA to determine if the partnership will still be acceptable.

Council Member Grzan reported that he had spoken with Monterey, and they told him they were not making enough income to offset their costs.

City Manager Tewes asked Council Member Grzan to provide him with the name of his contact in Monterey so that he can talk with them and get the information on Monterey's situation.

Recreation and Community Services Division Manager Spier offered to provide Council Member Grzan with a comparison sheet of comparable indoor recreation facilities so he can see how they are doing in their operations.

In response to an inquiry by the Mayor, Ms. Spier stated that the rock climbing wall had been value engineered out of the plan, so they would have to have a portable wall.

Mayor Kennedy opened the public comment.

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No comments being offered, the public comment was closed.

Council Member Sellers thanked the staff for coming in with the project within budget, and stated that he believes it will be a success. He made a motion to approve the staff recommended actions in the supplemental staff report, and Council Member Carr seconded.

Council Member Grzan stated that he will not be supporting the motion. He is interested in recreational programs, but cannot support this project because of the significant deficits in the community. He cannot approve moving forward with new projects when we have difficulty sustaining the ones we already have; and he fears that this will cause a need for reduction in services. He wants the Council to focus energy and dollars on maintaining what we have before adding additional debt. He stated that he knows of no recreational agency that makes sufficient moneys to sustain themselves, and that this will add a significant risk if it goes forward. Therefore, he will not be supporting this project or others until the economic issues are resolved.

Council Member Tate stated that he was in agreement with Council Member Grzan, but he will support the motion because the Council had previously made the decision to move forward with this project and he needs to support that direction. He shares some of the same concerns, but hopes that this project will be successful. So far he feels that they are doing well with what they have done.

Mayor Kennedy stated that he is supporting the motion. He feels that the consultants have done a good analysis; they have a proven track record with their estimates at the Aquatics Center and have achieved the goals they set. He is comfortable that there is minimal risk in proceeding, and that the center will provide a benefit to the community that is needed. He feels it makes sense to proceed.

Acting City Attorney Siegel made a clarification of the motion that in addition to awarding the contract to the 2nd lowest bidder, the apparent low bidder is being released and the terms outlined in the letter from Kimberly Fisher of West Bay Builders, Inc. to provide the City with \$15,000 of new fitness equipment as compensation for the City are being accepted.

Council Member Sellers included this statement as part of his motion.

Action:

On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council (4-0, with Grzan voting NO) <u>Released</u> the apparent low bidder, West Bay Builders, Inc. and <u>Accepted</u> their offer of compensation in the amount of \$15,000 worth of new fitness equipment as described in the April 20, 2005 letter from West Bay Builders, Inc. signed by Kimberly Fisher, General Counsel.

Action:

On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council (4-0, with Grzan voting NO) <u>Approved</u> the Project Plans and Specifications.

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Action:

On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council (4-0, with Grzan voting NO) <u>Awarded</u> the construction contract to the 2^{nd} lowest bidder, West Coast Contractors, Inc. in the amount of \$16,630,000 for base bid and additive alternate #4 (acoustical partition).

Action:

On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council (4-0, with Grzan voting NO) <u>Authorized</u> the City Manager to execute various consultant agreements for professional services during construction, subject to review and approval by the City Attorney.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

- 1. Council Member Tate requested the Council do work plans for the various new subcommittees.
- 2. Council Member Tate requested a discussion on how to handle items that should be referred to the subcommittees; including a discussion of operational structure that will make the subcommittees as efficient as possible.
- 3. Council Member Grzan requested a review of litigation costs and attorney fees.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:48 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK/DEPUTY AGENCY SECRETARY



CITY COUNCIL STAFF REPORT

MEETING DATE: May 4, 2005

ZONING AMENDMENT APPLICATION ZAA-89-16: CHURCH - LABRUCHERIE

RECOMMENDED ACTION(S):

- 1. Open/close Public Hearing
- 2. Waive the First and Second Reading of Zoning Amendment Ordinance
- 3. Introduce Zoning Amendment Ordinance

EXECUTIVE SUMMARY:

The subject Planned Unit Development is a 4.8 acre site located on the west side City Manager of Vineyard Boulevard extending to the east side of Church Street, opposite Barrett Avenue. The property was zoned PUD in 1983. An amendment to the PUD district was approved in 1989 to establish a precise development plan for an eight building. 70,000+ square foot industrial complex. Allowable uses were not identified as part of the 1989 zoning amendment. Current permitted and conditional uses are those allowed in the M-L, Light Industrial District.

To better market the project to specific end users, the property owner is requesting an amendment to the PUD to identify permitted and conditional uses. The requested uses are listed in Exhibit "B" to the attached Ordinance. The uses are similar to those allowed in the M-L district except that wholesale electrical, plumbing, cabinet, and heating shops, upholstery shops, trade schools, and business schools would be allowed as permitted uses. Commercial athletic facilities (i.e., health clubs, gyms, handball, basketball, etc.) for adults only would also be permitted uses. Such uses currently require a conditional use permit.

Staff reviewed the proposed uses for the PUD district and, with some modifications agreed to by the property owner; find that the uses would be compatible with existing surrounding land uses. The trip generating characteristics of the proposed uses are comparable to the uses allowed under the M-L zoning. Defining the allowable uses in the PUD therefore, will have no new environmental impacts.

The Commission reviewed the applicant's request at their April 12, 2005 meeting, and voted 3-2 to recommend approval of the PUD amendment. Commissioners voting no on the recommendation felt that item R in Exhibit B – trade schools and business schools for adults only, and item T – commercial athletic facilities for adults only, should be listed as conditional uses. The Commissioners were concerned that these uses might generate traffic pattern problems for the complex and may require more parking than would be available. The majority of the Commission felt that these types of uses are self regulating and that additional oversight through a use permit was not required. Similar uses in the Morgan Hill Ranch PUD (fitness club) and in the Cochrane Business Ranch (trade school) have not generated traffic or parking problems in those industrial areas. A copy of the Commission staff report and draft minutes are attached for the Council's reference

FISCAL IMPACT:

No budget adjustment required.

Agenda Item # 14

Prepared By:

Planning Manager

Approved By:

Community **Development Director**

Submitted By:

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 619, NEW SERIES AND ORDINANCE NO. 955, NEW SERIES, ESTABLISHING A LIST OF PERMITTED AND CONDITIONAL USES ON A 4.8 ACRE INDUSTRIAL PLANNED UNIT DEVELOPMENT ON THE WEST SIDE OF VINEYARD BOULEVARD, NORTH OF VINEYARD COURT. (APN 817-02-055 thru 062) (ZAA-89-16: Church-LaBrucherie)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- **SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- **SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration has been filed.
- **SECTION 4.** The City Council finds that the proposed amendments to the Planned Unit Development District are consistent with the criteria specified in Chapter 18.30 of the Morgan Hill Municipal Code.
- SECTION 5. The Council hereby approves a list of allowable uses within Lots 1 thru 8 on a 4.8 acre PUD on the east side of Church Street and west side of Vineyard Boulevard, as shown on the attached zoning plat (Exhibit A), to include those uses identified in the attached Exhibit B.
- **SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- **SECTION 12.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

City of Morgan Hill Ordinance No., New Series Page 2

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 4th Day of May 2005, and was finally adopted at a regular meeting of said Council on the Day of May 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES:	COUNCIL MEMBERS:	
NOES:	COUNCIL MEMBERS:	
ABSTAIN:	COUNCIL MEMBERS:	
ABSENT:	COUNCIL MEMBERS:	
ATTEST:		APPROVED:
Irma Torrez	z, City Clerk	Dennis Kennedy, Mayor
	∞ <u>CERTIFICATE (</u>	OF THE CITY CLERK &
CALIFORN , New Series	IIA, do hereby certify that the for	RK OF THE CITY OF MORGAN HIL regoing is a true and correct copy of Ordinance N the City of Morgan Hill, California at their regul
WIT	NESS MY HAND AND THE S	EAL OF THE CITY OF MORGAN HILL.
DATE:		
		IRMA TORREZ, City Clerk

Exhibit "B"

The Labrucherie Planned Unit Development (PUD)

The Labrucherie PUD is an ML (light industrial) area intended to provide facilities for research, administrative, lighter manufacturing, wholesale and heavy service commercial uses not suitable to commercial districts.

Permitted Uses

The following uses shall be permitted in the Labrucherie PUD:

- A. Administrative and executive offices:
- B. Medical, dental, research, experimental, film and testing laboratories;
- C. Manufacturing, assembly or packaging of products from previously prepared materials, such as cloth, plastic, paper, leather, precious or semiprecious metals or stones, but not any manufacturing uses involving primary production from raw materials (e.g. animal hides, trees, raw metals, etc.);
- D. Agriculture, including nurseries, but not including raising animals for commercial purposes;
- E. Manufacture of electric and electronic instruments and devices;
- F. Construction and related trades businesses which include indoor warehousing and/or wholesale components;
- G. Wholesale, including electrical, plumbing, cabinet, sheet metal, and heating and air conditioning shops;
- H. Retail sales that are ancillary and supportive of electrical, plumbing, cabinet and heating and air conditioning shops. The floor area devoted to retail display and sales may occupy no more than 15% of the gross floor area of the building as occupied by the business and must be separated from other portions and uses by permanent walls.
- I. Minor motor vehicle repair;
- J. Print, photo copy and lithographic shops;
- K. Upholstery shops;
- L. Sales of goods manufactured, processed or assembled on the premises;
- M. Software development;
- N. Research and development;
- O. Woodworking shops, but not including such operations as saw and planing mills or production of wood products from raw materials;
- P. Welding and machine shops:
- Q. Business Service Firms (janitorial, landscaping, exterminating, etc.);
- R. Trade and business schools for adults only:
- S. Sign shops;
- T. Commercial athletic facilities (i.e. health clubs, gyms, handball, basketball, volleyball, racquetball)for adults only;
- U. Repair shops for household or commercial items

Conditional Uses

The following uses may be conditionally allowed in the Labrucherie ML light industrial PUD subject to issuance of a conditional use permit in accordance with Chapter 18.54 of the Morgan Hill Planning and Zoning Codes.

- A. Sales of goods manufactured, processed or assembled on the premises, where the retail sales and display area exceeds 25% of the gross floor area of the building as occupied by the business.
- B. Public or quasi-public uses of an educational, vocational or recreational nature;
- C. Public utility buildings and service yards;
- D. Warehouses and distribution depot facilities;
- E. Animal hospital and veterinary clinics;
- F. Mini-storage facilities;
- G. Major motor vehicle repair;
- H. Auction houses;
- I. Business services, such as accounting, advertising and direct mail, credit reporting, data processing, employment agencies, messenger, courier and delivery services, travel agencies, packaging and labeling;
- J. Reverse vending machines and recycling centers as defined in Public Resources Code Section 14420.5 and 14520.
- K. Religious institutions;
- L. Home improvement centers;
- M. Caretakers units;
- N. Commercial recreation, not otherwise listed in the permitted use section;
- O. Any other use which the City Council and/or Planning Commission finds to be of similar nature to the permitted uses and conditional uses specified in the chapter for ML zoning districts in the Morgan Hill Planning and Zoning Codes.
- P. Retail, including sales, rental, display, storage, repair and servicing of bulky commodities including:
 - a. Carpeting and other floor coverings,
 - b. Catalog and other mail order sales,
 - c. Catering and party rentals,
 - d. Construction equipment and machinery,
 - e. Garden and farm equipment,

- f. Carpeting and other floor coverings,
- g. Catalog and other mail order sales,
- h. Catering and party rentals,
- i. Outdoor display of construction equipment and machinery,
- j. Other construction industry related products,
- k. Office furniture, equipment and machinery, including computers, and
- 1. Household furniture.

The floor area devoted to retail display and sales may occupy no more than 15% of the gross floor area of the building as occupied by the business and must be separated from other portions and uses by permanent walls. (However, the Planning Commission may authorize an increase of retail and display floor area to a maximum of 25% of the gross floor area of the building as occupied by the business when it finds that, due to exceptional circumstances associated with the building or the existing and/or proposed retail use of the building, such increase is warranted.) Such retail use must be conducted completely within the building and served by on-site employees. Customer parking must be consistent with the requirements of Chapter 18.50 of Division 1 of the Morgan Hill Planning and Zoning Codes. The business must maintain the industrial character, including signs, of the district

The following uses are prohibited from locating in the Labrucherie Planned Unit Development:

- A. All Group I occupancies;
- B. All Group E occupancies which involve day care, mentally retarded persons (profoundly or severely) or non-ambulatory persons, For the purposes of this section, these uses shall be as defined by the Uniform Building code with the state of California amendments, as amended and as adopted by the City.



CITY COUNCIL STAFF REPORT MEETING DATE: May 4, 2005

COMMUNITY DEVELOPMENT PROCESSING FEE ADJUSTMENTS

RECOMMENDED ACTIONS:

- 1. Open & close Public Hearing
- 2. Adopt the Resolution

A	Agenda Item # 15
	Prepared By:
	Finance Director
	Submitted By:

City Manager

EXECUTIVE SUMMARY: On July 17, 2002, the City Council adopted a new schedule of user fees effective September 17, 2002. The revised fees and new fees were based upon the attached study conducted by the City's consultant, Maximus. The consultant and staff presented proposed changes to User Fees including Planning, Building, and Engineering fees. The consultant determined the fee necessary to recover the estimated cost incurred by the City for each activity for which the City charges the public. Collectively, fees at that time brought \$2,022,137 into the Community Development Fund in an average year, but accounted for \$3,370,661 in costs, causing a \$1,348,524 annual loss. The consultant calculated that to fully recover these costs, Planning fees would need to increase by 129%, Building fees by 41%, and Engineering fees by 55%. Current City policy, as stated in Municipal Code Chapter 3.50, is to recover 100% of costs reasonably borne in providing regulation, products, or services, with certain exceptions. For those Building fees referenced in the Uniform Building Code (UBC) tables, fees were adjusted in September 2002 to the 1997 UBC table amounts, which provided for full cost recovery of those fees.

For remaining Community Development fees, (Planning, non-UBC Building, and Engineering fees), due to the pendancy of the development processing audit, the City Council approved, effective September 1, 2002, maximum increases of only 20%, instead of the larger increases necessary to bring these fees to the 100% mark, and directed staff to return following completion of the development processing audit with a more detailed assessment as to whether the large increases could be reduced. On November 6, 2002, staff presented to the City Council the response to the audit. The study did not identify areas for significant operating cost reduction, but rather recommended increased contract staffing. As a result, staff recommended that fee adjustments necessary to bring planning, building, and engineering fees up to full cost recovery be subsequently implemented over a three year period beginning July 2003, so as to minimize effects on the economic well-being of the community. The City Council approved the July 2003 and July 2004 phases of these fee increases.

Staff recommends at this time that the third phase increasing certain Community Development fees be implemented over two years, effective July 6, 2005, and July 1, 2006, in order to further cushion the effects of these increases on the local economy. These increases are necessary for the Community Development Fund to recover costs of providing services to the public. Exhibit A to the Resolution describes current fees, proposed July 5, 2005, increases, and proposed July 1, 2006 increases.

Staff advised developers of the proposed changes by sending them a copy of the Notice of Public Hearing.

FISCAL IMPACT: The City would more accurately recover costs from those using City services.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REVISING FEES AND SERVICE CHARGES PURSUANT TO TITLE 3, CHAPTER 3.50, OF THE MORGAN HILL MUNICIPAL CODE

WHEREAS, on September 7, 1988, the City Council of the City of Morgan Hill adopted Ordinance No. 880, N.S., codified as Chapter 3.50 of the Morgan Hill Municipal Code, which establishes city policy as to the percentage of the City's costs to be recovered from users of City services; and,

WHEREAS, consistent with Chapter 3.50, City policy is to recover the full cost of providing special services of a voluntary and limited nature, in order that general tax monies used to fund services of a broader nature, such as police and fire protection, are not diverted and thereby utilized to unfairly and inequitably fund special services; and,

WHEREAS, in order to effectuate its cost recovery policy the City Council has adopted various resolutions setting forth fees and charges; and,

WHEREAS, in a report dated May 2002, by DMG Maximus, the City of Morgan Hill conducted an extensive and exhaustive analysis of its services, the costs of providing those services, the beneficiaries of those services, and the revenues produced by those paying fees and charges for those services; and,

WHEREAS, City staff has made available to the public documentation related to the costs of providing those services and the analytical process used to arrive at such costs, along with revenues produced by those paying fees and charges for those services, and has held two public information sessions regarding the same; and,

WHEREAS, on May 4th, 2005, the City Council held a noticed public hearing on the fees, and duly considered all written and verbal information presented to it, which testimony and exhibits are hereby incorporated into the record of this matter.

NOW, THEREFORE, the City Council of the City of Morgan Hill, based upon all documents, statements and facts known to the City, does hereby resolve:

SECTION 1. <u>Fee Schedule Adoption</u>. Based upon the record before it and the findings set forth above, the City Council hereby adopts the schedule of fees and charges, attached hereto and incorporated herein on <u>Exhibit A</u>, so that the fees and charges attached hereto in Exhibit A are implemented. The City Council directs the City Manager to have appropriate City departments apply and collect said fees for identified services.

SECTION 2. Separate Fee For Each Process; Additional Fees and Refunds. All fees set by this resolution are for each identified process or service. Additional fees shall be required for each additional process or service that is requested or required. Where fees are indicated on a per unit basis of measurement, the fee stated is for the identified unit or portion thereof within the indicated ranges of such units.

City of Morgan Hill Resolution No. Page -2 -

SECTION 3. Collection of Fees and Implementation Dates. The City Council hereby orders that all increases in fees specified in Exhibit A in the column entitled "Proposed Fee July 5, 2005," be effective July 5, 2005, and that all increases in fees specified in Exhibit A in the column entitled "Proposed Fee July 1, 2006," be effective July 1, 2006. The City Council finds that delay in implementation of full cost recovery until July 1, 2006, as described in Exhibit A in the column entitled "Projected Fee July 1, 2006," is necessary to (1) encourage the economic well-being of the community through proactive initiatives which leverage private sector investment and involvement, thereby lessening some of the cost impacts on projects, and (2) to allow developers certainty in the development process.

SECTION 4. <u>Automatic Annual Adjustment</u>. Each fee, for which "CPI" is referenced in <u>Exhibit A</u>, shall be adjusted automatically on July 1 of each fiscal year by the increase in the Consumer Price Index for Urban Wage Earners, for the year ended the previous April.

SECTION 5. <u>Interpretation.</u> This Resolution may be interpreted by the City Manager. Should there be a conflict in regards to the applicability of the fees, or the charges imposed thereunder, the City Manager is authorized to determine which fee, or combination thereof, should be applied.

SECTION 6. <u>Severability.</u> If any portion of this Resolution is declared invalid by a court of competent jurisdiction, then it is the intent of the City Council that all other portions of the Resolution shall be severed and remain in full force and effect.

	SED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held Day of, 2005, by the following vote.
	COUNCIL MEMBERS: COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS: COUNCIL MEMBERS:
	₹ CERTIFICATION ₹
CALIFÓRN	RMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, TA, do hereby certify that the foregoing is a true and correct copy of Resolution adopted by the City Council at a Regular Meeting held on May 4, 2005.
WIT	NESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.
DATE:	
	IRMA TORREZ, City Clerk

Service No	Account Number		Unit	Current Fee	Proposed Fee July 5, 2005	Proposed Fee July 1, 2006
3	206- 38148	Sign Permit Review & Inspection	Application	\$759	\$851 + <u>CPI (1)</u>	\$943 + <u>CPI (2)</u>
3 A	206- 38149	Sign Copy Review	Application	\$226	\$273 + <u>CPI (1)</u>	\$319 + <u>CPI (2)</u>
7	206- 38159	Tentative Parcel Map Fee	Application	\$3,353	\$3,578 + <u>CPI (1)</u>	\$3,803 + <u>CPI (2)</u>
8		Tentative Subdivision Map Fee	Application	\$4,608	\$4,718 + <u>CPI (1)</u>	\$4,828 + <u>CPI (2)</u>
9	206- 38138	Reversion to Acreage Permits	Application	\$2,539	\$2,799 + CPI (1)	\$3,419 + <u>CPI (2)</u>
10		Lot Line Adjustment (PW)	Application	\$1,118	\$1,294 + <u>CPI (1)</u>	\$1,294 + <u>CPI (2)</u>
11		Arch & Site Plan Review	Application	\$3,564	\$3,898 + <u>CPI (1)</u>	\$4,231 + <u>CPI (2)</u>
12		Site Plan Review Fees	Application	\$3,073	\$3,412 + <u>CPI (1)</u>	\$3,750 + <u>CPI (2)</u>
13		Conceptual Plan Review	Application	\$2,810	\$3,274 + <u>CPI (1)</u>	\$3,737 + <u>CPI (2)</u>
16		Uniform Sign Program	Application	\$1,562	\$1,723 + <u>CPI (1)</u>	\$1,884 + <u>CPI (2)</u>
17		Time Ext. Review-Non Admin.	Application	\$1,955	\$2,191 + <u>CPI (1)</u>	\$2,427 + <u>CPI (2)</u>
17 A	1	Time Ext. Review-Admin.	Application	\$703	\$820 + <u>CPI (1)</u>	\$937 + <u>CPI (2)</u>
18		Preliminary Plan Review	Application	\$3,673	\$3,880 + <u>CPI (1)</u>	\$4,086 + <u>CPI (2)</u>
19	206- 38170	Conditional Use Permit	Application	\$3,935	\$4,288 + <u>CPI (1)</u>	\$4,641 + <u>CPI (2)</u>
20	206- 38174	Variance Review	Application	\$3,848	\$4,281 + <u>CPI (1)</u>	\$4,713 + CPI (2)
20 A	206-	Variance Review-Minor Exceptions	Application	\$1,529	\$1,749 + <u>CPI (1)</u>	\$1,969 + <u>CPI (2)</u>
21		Temporary Use Permit Review	Application	\$1,295	\$1,469 + <u>CPI (1)</u>	\$1,643 + <u>CPI (2)</u>
22	206- 38169	Out-of-Agency Service Request	Application	\$3,882_plus any LAFCO fees	\$4,274 + <u>CPI</u> (1) plus any LAFCO fees	\$4,665 + <u>CPI</u> (2) plus any LAFCO fees
23	206- 38181	Planned Unit Development	Application	\$4,550	\$4,877 + CPI (1)	\$5,204 + <u>CPI (2)</u>
25	•	General Plan Review & Revision	Application	\$4,293	\$4,534 + <u>CPI (1)</u>	\$4,775 + CPI (2)
26		Annexation Processing	Application	\$4,148 plus any LAFCO fees	\$4,571 + <u>CPI (1)</u> plus any LAFCO fees	\$4,994 + <u>CPI (2)</u> plus any LAFCO fees
27	206- 38185	Zoning Amendment Review	Application	\$3,791 \$1,094 if processed concurrently with General Plan Amendment or Annexation	\$4,118 + <u>CPI (1)</u> \$1,094 + <u>CPI (1)</u> if processed concurrently with General Plan Amendment or Annexation	\$4,445 + <u>CPI (2)</u> \$1,094 + <u>CPI (2)</u> if processed concurrently with General Plan Amendment or Annexation

Service	Account	Service Center	Unit	Current	Proposed Fee	Proposed Fee
No	Number			Fee	July 5, 2005	July 1, 2006
28	206- 38186	Zoning Text Amendment Review	Application	\$4,392	\$4,776 + <u>CPI (1)</u>	\$5,159 + <u>CPI (2)</u>
29	206- 38123	Urban Service Area Amendment	Application	\$3,920/City initial process \$4,162/LAFCO	\$4,338 + <u>CPI (1)</u> /City initial process \$4,245 + <u>CPI</u> /LAFCO	\$4,755 + <u>CPI (2)</u> /City initial process \$4,328 + <u>CPI</u> /LAFCO
33	206- 38183	Res. Planned Dev Review	Application	\$4,342 \$1,172 if processed concurrently with Tentative Subdivision or Parcel Map	\$4,546 + <u>CPI (1)</u> \$1,172 + <u>CPI (1)</u> if	\$4,750 + <u>CPI (2)</u> \$1,172 + <u>CPI (2)</u> if processed concurrently with Tentative Subdivision or Parcel Map
35	206- 38141	Preliminary Measure "P" Review	Application	\$3,299	\$3,607 + <u>CPI (1)</u>	\$3,915 + <i>CPI (2)</i>
35 A	206- 38143	Micro Measure 'P' Admin Review	Application	\$3,695	\$4,319 + <u>CPI (1)</u>	\$4,942 + <u>CPI (2)</u>
35 B		Micro Measure 'P' Non-Admin Review	Application	\$4,608	\$5,508 + <u>CPI (1)</u>	\$6,408 + <u>CPI (2)</u>
36	206- 38142	Final Measure 'P' Review	Application	\$9,003	\$10,095 + <u>CPI (1)</u>	\$11,187 + <u>CPI (2)</u>
37		Cultural Resource Designation Review	Application	\$2,946	\$3,270 + <u>CPI (1)</u>	\$3,593 + <u>CPI (2)</u>
38	206- 38112	Cultural Resource Alteration	Application	\$2,971	\$3,283 + <u>CPI (1)</u>	\$3,594 + <u>CPI (2)</u>
39		Process Appeal-Com Board Decision	Application	\$2,044	\$2,191 + <u>CPI (1)</u>	\$2,338 + <u>CPI (2)</u>
40	206- 38105	Process Appeal-Staff	Application	\$1,681	\$2,000 + <u>CPI (1)</u>	\$2,319 + <u>CPI (2)</u>
41	206- 38115	Development Agreement Review	Request	\$3,305 \$3,116 if processed concurrently with Tentative Subdivision or Parcel Map.	\$3,862 + <u>CPI (1)</u> \$3,725 + <u>CPI (1)</u> if processed concurrently with Tentative Subdivision or Parcel Map.	\$4,419 + <u>CPI (2)</u> \$4,334 + <u>CPI (2)</u> if processed concurrently with Tentative Subdivision or Parcel Map.
42 A	206- 38740	Reimbursement Agreement	Application	\$1,238	\$1,363 + <u>CPI (1)</u>	\$1,487 + <u>CPI (2)</u>
43	206- 38178	Williamson Act. Cancel. Review	Request	\$2,904	\$3,247 + <u>CPI (1)</u>	\$3,590 + <u>CPI (2)</u>
44	206- 38187	Zoning Conf. Review	Request	\$599	\$728 + <u>CPI (1)</u>	\$857 + <u>CPI (2)</u>
46		Exception to Loss of Building Allotment	Request	\$1,955	\$2,191 + <u>CPI (1)</u>	\$2,427 + <u>CPI (2)</u>
47	206- 38108	C.C. & R. Review	Application	\$1,056 plus fully burdened hourly rate* for City Attorney review	\$1,267 + <u>CPI (1)</u> plus fully burdened hourly rate* for City Attorney review	\$1,478 + <u>CPI (2)</u> plus fully burdened hourly rate* for City Attorney review

Service	Account		Unit	Current	Proposed Fee	Proposed Fee
No	Number			Fee	July 5, 2005	July 1, 2006
49		Eng. Plan Checking & Inspect.	Application	Fee Based on	Fee Based on	Fee Based on
	38734			Estimated	Estimated	Estimated
				Construction costs.	Construction costs.	Construction costs.
				For est. constructions	For est. constructions	For est. constructions
				costs	costs	costs
				-up to \$100,000 =	-up to \$100,000 =	-up to \$100,000 =
				12.5%	12.9%	13.3%
				-between \$100,001	-between \$100,001	-between \$100,001
				and	and	and
				\$200,000 = 11.2%	\$200,000 = 11.5%	\$200,000 = 11.8%
				- between \$200,001	- between \$200,001	- between \$200,001
				and	and	and
				\$500,000 =10.3%	\$500,000 =10.3%	\$500,000 =10.3%
				- exceeding \$500,000	exceeding \$500,000 =	exceeding \$500,000 =
				= 8.3%	8.6%	8.8%
50 A	206- 38737	Easement Abandonment	Application	\$1,793	\$1,902 + <u>CPI (1)</u>	\$2,011 + <u>CPI (2)</u>
52	206- 38430	Certificate of Compliance	Request	\$1,863	\$2,080 + <u>CPI (1)</u>	\$2,297 + <u>CPI (2)</u>
55	206-	Encroachment Rev. & Insp.	Permit	Utility: \$246 per permit	Utility: \$267 + CPI (1)	Utility: \$287 + CPI (2)
	38703	·		plus fully burdened	per permit plus fully	per permit plus fully
				hourly rate* for	burdened hourly rate	burdened hourly rate
				inspection time in	for inspection time in	for inspection time in
				excess of one hour.	excess of one hour.	excess of one hour.
				Private: \$329 per	Private: \$370 + CPI (1)	Private: \$410 + CPI (2)
				permit plus fully	per permit plus fully	per permit plus fully
				burdened hourly rate*.	burdened hourly rate	burdened hourly rate
69	010-	Police Report	Report	\$12 + \$0.04 for each	Same	(4)
	37836			page over 5 PP.		
91	206-	Wide Load Review - PW	Application	\$106	\$127 + CPI (1)	\$148 + <i>CPI (2)</i>
	38723					
92	206- 38724	Wide Load Permit	Permit	\$138	\$144 + <u>CPI (1)</u>	\$149 + <u>CPI (2)</u>
93	206- 38741	Reimbursement Agreement - PW	Application	\$1,238	\$1,363 + <u>CPI (1)</u>	\$1,487 + <u>CPI (2)</u>

[•] Burdened hourly rates described above are to be established by the City Manager at rates that do not exceed the sums of the actual applicable salary, employee benefit, and overhead costs

<u>CPI (1):</u> Each fee, for which "CPI (1)" is referenced above, is to be adjusted automatically on July 5 of 2005, by the change in the Consumer Price Index for Urban Wage Earners, for the year ended the previous April.

<u>CPI (2)</u>: Each fee, for which "CPI (2)" is referenced above in the column entitled "Proposed Fee July 1, 2006" shall be the sum of the proposed fee listed, the amount of the 2005 CPI increase described in footnote CPI (1) above, and the amount of the 2006 CPI increase. The 2006 CPI increase shall be equal to the change in the Consumer Price Index for Urban Wage Earners, for the year ended the previous April. Further, the fee effective July 1, 2006, shall be adjusted automatically for each fee by the change in the Consumer Price Index for Urban Wage Earners on each subsequent July 1 for the year ended the previous April.

INDEPENDENCE DAY, INC. AND MORGAN HILL MUSHROOM MARDI GRAS EVENTS

RECOMMENDED ACTION(S): Consider oral report by the Council's Community and Economic Development Committee and take action as needed.

Agenda Item # 16
Prepared By:
BAHS Director
Submitted By:
City Manager

EXECUTIVE SUMMARY:

On April 20, 2005, the Council considered a request by Sunday Minnich, the 2005 Event Coordinator for the 26th Annual Morgan Hill Mushroom Mardi Gras (MMG) event, for City sponsorship of the MMG event. The Mushroom Mardi Gras event is scheduled to take place on Saturday and Sunday, May 28 and May 29, 2005. Ms. Minnich requested that the City of Morgan Hill partner and sponsor this year's event at a level the Council deemed appropriate. At this meeting, the Council also discussed the sponsorship request from Independence Day, Inc. (IDI) for its July 4th events.

The discussion of these two requests led to the Council making available a total of \$16,000 for these two events. The Council's Community and Economic Development Committee (C&ED) was requested to recommend to the Council how best to allocate the funding. The C&ED met to discuss the issue on April 28th and have directed staff to pursue some options. However, staff was unable to report back to the C&ED on its findings prior to the publication of this agenda. As a result, the C&ED will make an oral report at the meeting regarding its recommendations.

FISCAL IMPACT: There is approximately \$11,000 dollars available in the Community Promotions' budget (010-42248-1220) that has been set aside largely for IDI's Fourth of July activities. The impact on the City's budget will depend on the option adopted by the Council.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 4th, 2005

MORGAN HILL LIBRARY Approval of Schematic Design

RECOMMENDED ACTION(S): 1) Approve Schematic Design 2) provide direction regarding LEED 3) authorize the City Manager to prepare and execute a second amendment to the contract with Noll and Tam in the amount of \$171,753.

Sr. Project Manager Approved By: Recreation & Community Services Manager Submitted By: City Manager

Agenda Item # 17

EXECUTIVE SUMMARY:

At the March 16, 2005 meeting, Council approved the schedule for The New Morgan Hill Library. Over the past few months the architect, construction management firm, city staff and county library staff have developed the design for the new 28,000 square foot library program. The Schematic Design will be presented to The Library Commission on May 2 and their comments will be presented at the Council Meeting of May 4.

Staff requires Council's approval for Schematic Design relative to the following design concepts 1) Site Design 2) Building Floor Plan and 3) Building Elevations. Council's approval will allow the project to proceed into Design Development over the next three months according to the approved Project Schedule. Exhibit A, B, and C depict the proposed concept for Site, Floor Plan and the Building Elevations. Attached as Exhibit D is a Schematic Design Cost Estimate prepared by TBI Construction and Construction Management (TBI). The summary on page 1 shows the project is projected be on budget for the new design concept.

With respect to Leadership in Energy and Efficiency in Design (LEED), there are cost and time implications to implement LEED. To implement LEED for the library would increase the cost by an order of magnitude of \$600,000 to attain certification level and add a minimum two month delay to the project. Staff recommends not pursuing LEED for the library project due to the additional cost and added time.

Staff is also requesting Council to approve a second amendment to Noll and Tam's Consultant agreement, per a negotiated fee agreement required for the new 28,000 square foot project. This additional cost of \$171,753 is within the overall professional service budget.

The next step in the Design Process is to proceed to Design Development returning to Council in August of 2005 for approval prior to proceeding into the Construction Documents Phase. See Exhibit E for Council approved project schedule.

FISCAL IMPACT: As identified in this report the project is projected to be within budget and remains on schedule for the new design concept. Sufficient funds exist in the Library CIP to fund the increased architectural fees.



CITY COUNCIL STAFF REPORT MEETING DATE: May 4, 2005

SETTING OF ANNUAL PUBLIC HEARING FOR FOX HOLLOW-MURPHY SPRINGS LIGHTING AND LANDSCAPE ASSESSMENT DISTRICT

RECOMMENDED ACTION: 1) Approve the attached 3 Resolutions setting the annual Public Hearing for the Fiscal Year 2005-2006 Fox Hollow-Murphy Springs Lighting and Landscaping Assessment District.

2) Direct the City Clerk to notice a copy of the resolutions as noted.

EXECUTIVE SUMMARY: The Fox Hollow-Murphy Springs Assessment District was created to pay for the maintenance of the parks and common area landscaping in new neighborhoods benefiting from the open space. Per government code sections 22623 to 22631, an engineer's report is required to set the annual assessments in the lighting and landscaping district.

Agenda Item # 18

Prepared By:

Deputy Director Public Works/ Operations

Approved By:

Director Public Works

Submitted By:

City Manager

This year staff is recommending assessment rate increases in 8 of the 20 sub areas and an inflator in 17 of 20 sub areas. This is imperative due to annual costs for maintenance exceeding revenues and rising deficit fund balances. Both of these actions require a Proposition 218 balloting process. Two public hearing dates are needed as a part of this process. These have been set for the City Council meetings of June 1 and 15, 2005. The June 1, 2005 public hearing is a "be heard" meeting where residents of the District can express to Council their opinions about the proposed assessment rate or inflator increases. Staff will hold property owner meetings to discuss the proposed assessment rate and inflator increases after tonight's meeting. Proposed notices to property owners for the increase in assessment and inflator are attached. Each will be covered with a clarifying letter explaining the proposed assessment increases and inflator. Prior to both of these public hearing dates, the City Council is required to declare their intent to levy assessments. Attached is a preliminary engineer's report assuming the property owner's approval all recommended assessment rate and inflator increases.

Exhibit A lists each sub area's annual revenue vs. expenses amounts. In 15 of the 20 cases annual expenses exceed revenues by the bracketed amount. If the proposed assessment rate or inflator increases are not approved by the property owners, maintenance costs will have to be reduced commensurate with these amounts.

The district consists of 20 residential sub-areas, affecting a total of 755 lots. Proposed changes in the annual assessments for each sub-area are shown on Exhibit A. In summary, it is proposed the assessment rate increase in 8 sub-areas, and an inflator be assessed in 17 of 20 sub areas. It is proposed that the assessments in 3 of the sub areas remain unchanged.

The 3 resolutions, in summary, are to 1) Initiate the proceedings for the levy of the assessments in the district, 2) Provide preliminary approval of the engineer's report and the proposed assessment levy and 3) Declare the City Council's intention to levy the assessments in the district and to set the Public Hearing for June 1 and June 15, 2005 at 7:00 p.m. These resolutions comply with the Landscaping and Lighting Act of 1972.

FISCAL IMPACT: The cost for preparation of this staff report and the engineer's report will be paid for by the Assessment District.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, INITIATING PROCEEDINGS FOR THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE FOX HOLLOW MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council has by previous Resolutions formed and levied annual assessments for the Fox Hollow Murphy Springs Landscape Assessment District (hereafter referred to as the "District"), pursuant to the provisions of the Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (hereafter referred to as the "Act") that provides for the levy and collection of assessments by the County of Santa Clara for the City of Morgan Hill to pay the maintenance and services of all improvements and facilities related thereto; and,

WHEREAS, the City Council has retained NBS for the purpose of assisting with the Annual Levy of the District, and to prepare and file a report with the City Clerk in accordance with the Act; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, PURSUANT TO *CHAPTER 3*, *SECTION 22624* OF THE ACT, AS FOLLOWS:

<u>Section 1</u> Annual Levy Report: The City Council hereby orders NBS to prepare and file with the City Clerk the Annual Engineer's Report concerning the levy and collection of assessments for the District for the fiscal year commencing July 1, 2005 and ending June 30, 2006 in accordance with *Chapter 3*, *Section 22622* of the Act.

<u>Section 2</u> Proposed improvements and any substantial changes in existing improvements: The improvements within the District may include, but are not limited to: turf, shrubs, plants and trees, landscaping, irrigation and drainage systems, graffiti removal, and associated appurtenances within the public right-of-ways or specific easements. Services provided include all necessary service, operations, administration and maintenance required to keep the improvements in a healthy, vigorous and satisfactory condition. The Annual Engineer's Report describes all new improvements or substantial changes in existing improvements.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 4th Day of May, 2005 by the following vote.

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: COUNCIL MEMBERS:

City of Morgan Hill Resolution No. Page 2 of 2

***** CERTIFICATION *****

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at a Regular Meeting held on May 4, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:	
·	IRMA TORREZ, City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, FOR PRELIMINARY APPROVAL OF THE ANNUAL ENGINEER'S REPORT REGARDING THE PROPOSED LEVY AND COLLECTION OF ASSESSMENTS FOR THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE MAINTENANCE DISTRICT, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council pursuant to the provisions of the Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (hereafter referred to as the "Act") did by previous Resolution, order the preparation of an Annual Engineer's Report (hereafter referred to as the "Report") for the District known and designated as the Fox Hollow/Murphy Springs Landscape Assessment District, (hereafter referred to as the "District"); and,

WHEREAS, there has now been presented to this City Council the Report as required by *Chapter 1, Article 4, Section 22566* of said Act; and,

WHEREAS, this City Council has carefully examined and reviewed the Report as presented and is preliminarily satisfied with the District, each and all of the budget items and documents as set forth therein, and is satisfied that the levy amounts, on a preliminary basis, have been spread in accordance with the special benefit received from the improvements, operation, maintenance and services to be performed within the District, as set forth in said Report; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 That the above recitals are true and correct.

<u>Section 2</u> That the "Report" as presented, consisting of the following:

- a. A Description of Improvements.
- b. The Annual Budget (Costs and Expenses of Services, Operations and Maintenance)
- c. The District Roll containing the Fiscal Year 2005/06 Levy for each Assessor Parcel within the District.

is hereby approved on a preliminary basis, and ordered to be filed in the Office of the City Clerk as a permanent record and to remain open to public inspection.

City of Morgan Hill Resolution No. Page 2 of 2

<u>Section 3</u> That the City Clerk shall certify to the passage and adoption of this Resolution, and the minutes of this meeting shall so reflect the presentation of the Report.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 4th Day of May, 2005 by the following vote.

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: COUNCIL MEMBERS:

***** CERTIFICATION *****

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at a Regular Meeting held on May 4, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:	
	IRMA TORREZ, City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING ITS INTENTION TO INCREASE ASSESSMENTS IN FOX HOLLOW/MURPHY SPRINGS LANDSCAPE MAINTENANCE DISTRICT, AND LEVY AND COLLECT SAID INCREASED ASSESSMENTS FOR THE MAINTENANCE OF IMPROVEMENTS, AND CALLING AN ASSESSMENT BALLOT PROCEEDING TO SUBMIT TO THE QUALIFIED PROPERTY OWNERS WITHIN SAID DISTRICT THE QUESTION OF THE LEVY OF THE PROPOSED INCREASED ASSESSMENTS FOR THE DITRICT, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council has previously formed the Fox Hollow/Murphy Springs Landscape Assessment District, (hereafter referred to as the "District"), to levy and collect assessments pursuant to the provisions of the Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500) (hereafter referred to as the "Act") that provides for the levy and collection of assessments by the County of Santa Clara for the City of Morgan Hill to pay the maintenance and services of all improvements and facilities related thereto; and,

WHEREAS, the City Council has retained NBS for the purpose of assisting with increasing assessments within the District, and to prepare and file a report with the City Clerk in accordance with the Act; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL, PURSUANT TO *CHAPTER* 2, *SECTION* 22587 OF THE ACT, AS FOLLOWS:

<u>Section 1</u> <u>Intention:</u> The City Council hereby declares its intention to increase assessments in the District over and including the land within the District boundary, and to levy and collect increased assessments on all such land to pay the annual costs of the maintenance of certain improvements described herein. The City Council has determined at this time to call an assessment ballot proceeding therein to authorize the increased assessments (which are more particularly outlined in the Engineer's Report) to pay the costs and expenses of the improvements described in Section 5 of this Resolution. The City Council finds that the public's best interest requires such increase, levy and collection.

Section 2 Calling a special ballot proceeding: Pursuant to Proposition 218, now California Constitutional Articles XIIIC and XIIID, (hereafter referred to as the "Proposition 218") approved by the California voters in November 1996, an assessment ballot proceeding is hereby called on behalf of the District on the proposition of levying the increased assessments and the assessment range formula to allow for reasonable increases within the District.

City of Morgan Hill Resolution No. Page 2 of 3

<u>Section 3</u> The assessment ballot proceeding for the District on the proposition of authorizing the increased assessments and the assessment range formula to allow for reasonable increases, pursuant to Proposition 218 consists of a ballot, included with the mailed notice required by California Government Code Section 53750 *et seq.*, distributed by mail, to the property owners of record within the District as of the county's last equalized secured property tax assessment roll. Each property owner's vote is weighted by the amount of their proposed assessment and property owners may return the ballot by mail or in person to the City Clerk not later than the conclusion of the **Public Hearing** on <u>Wednesday</u>, <u>June 15th</u>, <u>2005</u>. At the Public Hearing, pursuant to Proposition 218 the agency shall tabulate the ballots to determine if a majority protest exists. The ballots shall be weighted according to the proportional financial obligation of the affected property. A majority protest exists if, upon the conclusion of the Public Hearing, ballots submitted in opposition to the assessments exceed the ballots submitted in favor of the assessments.

<u>Section 4</u> <u>District Boundaries:</u> The boundaries of the District are described as the boundaries previously defined in the formation documents of the original District, within the boundaries of the City of Morgan Hill, within the County of Santa Clara, State of California.

<u>Section 5</u> <u>Description of Improvements:</u> The improvements which shall be provided for the property included in the District by and through the assessments and the proposed increased assessments levied annually thereon shall include, but are not limited to: turf, shrubs, plants and trees, landscaping, irrigation and drainage systems, graffiti removal, and associated appurtenances within the public right-of-ways or specific easements. Services provided include all necessary service, operations, administration and maintenance required to keep the improvements in a healthy, vigorous and satisfactory condition.

Section 6 Proposed Assessment Amounts: For Fiscal Year 2005/06, the proposed assessments shall be outlined in the Engineer's Report which details the annual assessments and formula and contains all matters required by Sections 22565 through 22574 of the Streets and Highways Code. The increased assessments, which are proposed to be levied for Fiscal Year 2005/06 on all parcels of assessable property in the District, are based on special benefit conferred upon each such parcel from the payment of the cost of the improvements described in Section 5 herein. The proportionate special benefit derived by each such parcel has been determined in relationship to the entirety of the capital cost of the improvements described in Section 5 herein. The amount of the increased assessment which is proposed to be assessed on each such parcel is based upon and will not exceed the reasonable cost of the proportional special benefit conferred on that parcel. The Engineer's Report, which is on file with the City Clerk of the City Council, and which has been presented to the City Council at the meeting at which this resolution is adopted, is approved. Reference is made to the Engineer's Report for a full and detailed description of the Improvements, the boundaries of the District and the assessments which are proposed to be increased on the assessable lots and parcels of property within the District for Fiscal Year 2005/06.

<u>Section 7</u> <u>Notice of Public Hearing:</u> Notice is hereby given that Public Meeting and a **Public Hearing** on these matters will be held by the City Council on <u>Wednesday</u>, <u>June 15th</u>, <u>2005 at 7:00 p.m.</u> or as soon thereafter as feasible in the City Council Chambers, located at 17555 Peak Avenue, Morgan Hill.

City of Morgan Hill Resolution No. Page 3 of 3

Section 8 Notice of Hearing and Ballots: The City Clerk of the City Council shall mail notice of the proposed increased assessments and of the time and place of the public hearing, as specified in Section 7 hereof, to the record owner of each assessable parcel of property identified in the Engineer's Report. Such notice shall specify the total amount of the increased assessments chargeable to all the property within the District, the amount chargeable to each owner's particular parcel, the duration of the assessments, the reason for the assessments and the basis upon which the amount of the proposed assessments was calculated, together with the date, time and location of the public hearing on the proposed assessments as specified in Section 7 hereof. The notice shall include, in a conspicuous place, thereon, a summary of the procedures applicable to the completion, return and tabulation of the assessment ballots, which will accompany the notice and shall include a statement that the existence of a majority protest will result in the assessments not being levied, and that a majority protest will exist if, upon the conclusion of the hearing, ballots submitted in opposition to the assessments exceed the ballots submitted in favor of the assessments. Each such notice mailed to owners of identified parcels within the District shall contain a ballot which includes the City's address for receipt of any ballot when completed by any owner receiving such notice whereby each such owner may indicate his or her name, reasonable identification of the parcel and support or position to the proposed assessments.

Section 9 The City Clerk is hereby authorized and directed to give notice of such hearing as provided by law.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 4th Day of May, 2005 by the following vote.

AYES: COUNCIL MEMBERS: NOES: COUNCIL MEMBERS: ABSTAIN: COUNCIL MEMBERS: ABSENT: COUNCIL MEMBERS:

***** CERTIFICATION *****

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No., adopted by the City Council at a Regular Meeting held on May 4, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:	
	IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: May 4, 2005

ECONOMIC DEVELOPMENT INHIBITORS

RECOMMENDED ACTION(S): Approve and direct staff to implement recommendations made by the Community and Economic Development Subcommittee related to economic development inhibitors.

EXECUTIVE SUMMARY: In March 2005, the City Council adopted the goal: "By April 2005, the full Council will agendize the 'Economic Development Inhibitors' identified in the FY05 Budget, and consider changes in policies and procedures." This task was assigned to the Council's Community and Economic Development Committee (C&ED) to develop recommendations. Attached is a memo which lists the specific economic development (ED) inhibitors, summarizes the C&ED's policy recommendations, and identifies the lead department. Please note the C&ED added two ED inhibitors to the list. The following is a brief summary of the C&ED recommendations:

- <u>Inhibitors #1. "Cost of Impact Fees"</u> Revise the City's Traffic/Sewer Fee Financing Program to make it more attractive to prospective users
- <u>Inhibitor #2. "Payment of Impact Fees"</u>- Direct staff to change current policy to allow non-residential developers to lock-in impact fees for six months upon submittal of a complete building plan-check application
- <u>Inhibitor #3. "Undergrounding Utilities"</u>- Financing program was established by the Agency.
- <u>Inhibitor #4."Cost of CUP's"</u>- Review current Conditional Use Permit (CUP) charges to determine if a lower rate is justifiable for smaller projects and those in the Downtown
- <u>Inhibitor #5. "CUP's for Mixed-Use projects"</u>- Recent zoning amendment no longer requires CUP's for mixed use projects in Downtown.
- <u>Inhibitor #6. "PUD's"</u>- C&ED will need to continue to discuss this issue before making any recommendations to the Council.
- <u>Inhibitor # 7. "ARB"</u> Modify the ordinance to give staff more discretion in specific areas of town such as Downtown.
- <u>Inhibitor #8. "Franchise Architecture"</u>- Continue to follow General Plan policies which prohibit franchise architecture.
- <u>Inhibitor #9. "CUP Expiration"</u>- Review the current CUP requirements and make recommendations to make the expiration dates more reasonable if deemed too onerous.
- <u>Inhibitor #10. "Sign Code"</u>- Revise the Sign Code to allow for up to three businesses to advertise on a monument sign per small shopping center.

If the above recommendations are approved, the majority will be brought back to the City Council for consideration because ordinance changes will be required. Staff will report back to the C&ED with a schedule for implementing the recommended changes.

FISCAL IMPACT: Depends on the adopted action.

BAHS Manager
Approved By:

BAHS Director
Submitted By:

Agenda Item # 20

Prepared By:



RESIGNATION

PARKS

CITY COUNCIL STAFF REPORT MEETING DATE: MAY 4, 2005

RECREATION COMMISSIONER

RECOMMENDED ACTION(S): <u>Accept</u> the resignation of Parks and Recreation Commissioner Don Jensen, and <u>Direct</u> staff on preferred process to fill the new vacancy.

Agenda Item # 20	
Prepared Ry	

Manager, Recreation & Community Services

Submitted By:

City Manager

EXECUTIVE SUMMARY:

AND

Parks and Recreation Commissioner Don Jensen has submitted a letter of resignation, effective immediately, which leaves his unexpired term vacant. The City Clerk's office recently held an application period for expiring terms, and Council conducted interviews through which three Parks and Recreation Commission vacancies were filled. There were five applicants, and all received a placement rating.

Commissioner Jensen's term expires April 1, 2006. Commissioners Librers, Bernardini, and Frederick's terms end April 1, 2006. The newly appointed commissioners, Hagiperos, Green, and Hardt-Mason, have terms which end April 1, 2007.

Council may fill the vacancy with the next highest vote-getter from the recent appointment process, or may direct staff to re-open the vacancy to new applicants. The unexpired term would be for one year, ending April 1, 2006.

FISCAL IMPACT: N/A



CITY COUNCIL STAFF REPORT MEETING DATE: May 4, 2005

Agenda Item # 21
Prepared & Submitted By:
City Manager

CITY ATTORNEY SERVICES

RECOMMENDED ACTION(S):

Provide direction to staff on additional information or analysis needed to support Council's decision on future City Attorney Services.

EXECUTIVE SUMMARY:

The law firm of Jorgenson, Siegel, McClure & Flegel is currently providing City Attorney services under contract. Based on the current level of services, it is anticipated the costs will be approximately \$20,000 per month for general municipal law services.

In order to recruit and retain a full time city employee to serve as City Attorney, the process would require a minimum of 90 days.

Attached is a staff report from February 2000 outlining a series of issues involved in determining whether to pursue recruitment or a contract with a full service municipal law firm.

The Mayor requested that this matter be agendized to provide Council an opportunity to initiate a discussion about the scope and level of services expected.

FISCAL IMPACT:

The City Manager's Recommended Budget for FY 06 will include funds for a full time City Attorney beginning October 1, 2005.

CITY OF MORGAN HILL

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: February 16, 1999

AGENDA ITEM NO.

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Estimated Time: 10 Minutes

TITLE:

RECRUITMENT FOR POSITION OF CITY ATTORNEY

RECOMMENDED ACTION:

- 1) Seek proposals from qualified executive search firms to conduct a recruitment to fill the position of City Attorney; and
- 2) Appoint a two person subcommittee of the Council to review the proposals and recommend a contract and recruitment process for consideration by the full Council.

EXECUTIVE SUMMARY: Since May 1999, the position of City Attorney has been filled on an "interim" basis by Ms. Helene Leichter of the law firm of Jorgenson, Siegel, McClure & Flegel. Under the contract, the City receives legal services from the firm, and Ms. Leichter manages the contracts with other firms for specialty work such as redevelopment, litigation, or personnel work.

At its goal setting retreat on February 1, the Council asked that this item be placed on the agenda to allow the Council to consider initiating a recruitment for a full time city employee to act as City Attorney.

There are several executive search firms in California with experience in recruiting city attorneys, and specific experience in the Bay Area.

For the Council's background we have attached an earlier staff report outlining in more detail the "pros and cons" of contracting for City Attorney services compared to hiring a full time city employee.

CONSISTENCY WITH COUNCIL GOALS: A determination on recruiting for a City Attorney will meet the Council goal of "Improving Organizational Efficiency and Effectiveness."

FISCAL IMPACT: Recruitment costs can be accommodated within the current appropriation of the City Attorney's Office. As discussed in the attachment, the costs of a full time employee will depend on the level of compensation determined by the Council, and the extent to which the City must invest in resources for legal research. The current budget provides sufficient funds for another city employee to serve as "deputy" but to this point, it has not been considered necessary to fill that position. Should an additional deputy be retained, it will be necessary to address office space needs which may have a cost impact. In general, the costs of an "in house" law office should not be significantly different from the current budget.

J. Edward Tewes, Interim City Manager

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

November 1, 1999

TO:

Mayor and Council

FROM:

City Manager

SUBJECT:

Update on Issues Associated with the Provision of Legal Services to the City

of Morgan Hill - City Council Agenda Item #20, 11/3/99

Introduction:

The City Council is evaluating how best to provide legal services to the City of Morgan Hill. Staff has been directed to examine the issue and provide information on the subject to the City Council.

As the Council knows, legal services are currently being provided by the law firm of Jorgenson, Siegel, McClure & Flegel. Helene L. Leichter is the appointed Acting City Attorney and serves under an agreement for services which runs through July 1, 2000.

In Fiscal Year 1999-2000 the City Council approved a budget of \$542,410 for the Office of the City Attorney. The approved Financial Plan for Fiscal Year 2000-2001 contains a budget of \$584,065. Salaries, wages, and benefits for the City Attorney, Deputy City Attorney, and Legal Secretary called for in the adopted budget comprise of \$318,940 in FY 99-2000 and \$346,170 in FY 2000-2001. Legal services for the Redevelopment Agency are accounted for under the Department of Business Assistance and Housing Services in the amount of \$105,000 for FY 99-2000 and \$105,000 for FY 2000-2001.

The City of Morgan Hill also uses the services of outside counsel for speciality areas of service. The firm of Whitmore, Johnson & Bolanos provides employment law services. The firm of Richards, Watson & Gershon principally provides services in redevelopment and cable communications law. From time-to-time, the City has used the services of other "outside" counsel for specialty work on time consuming assignments (e.g.: Mark Strombatne Law Firm; Best, Best & Krieger; Berg & Parker, LLP; Curiale, Dellaverson, Hirschfeld, Kelly & Kraemer, LLP; DeCuir & Somach; Endeman, Lincoln, Turek & Heater; Liebert, Cassidy & Frierson; Low, Ball & Lynch; and Meyers, Nave, Riback & Silver).

The following discussion will provide the Council with various viewpoints about services rendered by the office of the City Attorney. These comments are a product of research and observation.

Role of the City Attorney Defined in State Law:

The <u>California Municipal Law Handbook</u> (1997 Edition, page 11-27), prepared by the League of California Cities, has the following to say about the duties of the City Attorney:

"Controlling law vests wide latitude in city councils to define and control the duties of their city attorneys. The result is consistent with the general principle an attorney's duties are ordinarily defined and controlled by his or her client. Montgomery v. Superior Court, 46 Cal App. 3d 657, 670.121 Cal Rptr. 44 (1975)..."

In addition, under the California Supreme Court Case of <u>Charmaine Roberts v. City of Palmdale</u>, et. al. 1993 (5 Cal. 4th 363), the California Supreme Court decided that the "attorney-client" privilege exists between the City Council and its attorney and is protected from disclosure unless agreed to by the client (i.e. the city council). Thus, the relationship between the city attorney and city council holds the same weight in Law as would exist between a private citizen and his/her attorney.

Role of the City Attorney Defined in the Morgan Hill Municipal Code:

In late 1998, the City Council adopted an ordinance defining the "Powers and Duties" of the City Attorney which became Chapter 2.09 of the Municipal Code. A copy of this chapter is attached for your reference. (See Attachment "A.")

The City Attorney has four principle functions identified by ordinance. The first is to advise the City Council "in all matters of law." The second is to advise "all city officers and employees" in all matters of law. The third is to ensure that the City and its officers are provided a defense in litigation. The fourth is "prosecute on behalf of the people all criminal cases for violation of the municipal code and state law as appropriate."

City Attorney as Legal Adviser to the City Council:

The City Attorney is the chief legal adviser to the City Council.

The Council has adopted, as part of its budget, goals for the City Attorney's Department. However, aside from duties defined in State law and the Morgan Hill Municipal Code, the Council needs to define what relationship it wishes to have with the City Attorney's office, what roles the City Attorney plays within the existing organizational structure, and how the Council expects the City Attorney to interact with it collectively and individually. These determinations become the essence of the business relationship between the City Attorney's office and the City Council.

Once the expectations and relationships are defined, the City Council must then determine if it is best served by a full-time city attorney(s) or a contract city attorney. Whichever choice or when user demand exceeds the workload capacity of the incumbent is selected by the Council, contracting out to special counsel in specialized areas of the law will need to continue.

City Attorney as Legal Adviser to City Staff:

City Department Directors and the City Manager view the competent and timely delivery of legal advice to be a central ingredient to staff's success in achieving goals of the City Council, performing day-to-day work, and protecting the interests of the municipal corporation.

City staff surveyed see the following traits and services as necessary for the successful delivery of legal services:

- Approach issues in a fashion to provide advice on how something can be done.
- Routine, mechanical matters need to have a rapid turnaround time (e.g.: 3 days).
- Know legal limitations and not be hesitant about using expert special counsel for matters requiring same.
- If service is contracted, ensure that the city attorney is available onsite two or three times a week to have face-to-face meetings with City staff and to become familiar with overall City operations.
- Be available by telephone or e-mail for "quickie" advice to questions.
- Have expertise (or have access to expertise) in land use, CEQA, and code enforcement issues.
- Allow for the use of competent legal counsel in labor and redevelopment law.
- Be a team player. Give Council and staff the same advice on issues.
- If there is an in-house attorney, assign and manage substantial work to outside counsel in order to ensure the effective delivery of services.
- Recognize and appreciate the decades of experience City Department Directors and staff bring to issues and opportunities being faced by the City.
- Don't let legal issues become "bottlenecked" inside the office.

Full-Time City Attorney:

The costs for a full-time City Attorney's office are contained in the adopted Municipal Budget as described above.

Council members have asked if the services of two full-time attorneys is needed by the City at this time. Based upon current workload, staff does not think that the services of a Deputy City Attorney are needed, at this time, if the full-time model is used.

The Council has asked if a recruitment for a full-time attorney was initiated, what is the likelihood that an experienced candidate could be attracted to Morgan Hill? The former City Attorney's salary was \$101,050 + benefits annually (with a 5% increase on his/her first anniversary & 5% increase on his/her second anniversary). In July 1999, Employee Relations

Service provided the City with the attached information for compensation of full-time city attorneys in our area. (See Attachment "B.") It is assumed, in order to attract the services of a competent and experienced City Attorney candidate, compensation for the prospective candidate would have to be comparable with those paid by other Bay Area communities.

Contract City Attorney:

The cost to provide the services of the City Attorney on a contract basis are estimated to be \$180,000 per year, based upon the terms of the existing agreement.

Under normal circumstances, the provision of City Attorney services is not done by a single practitioner. In fact, a single practitioner is not recommended. If a contract City Attorney option is selected, the City Council should contract with the services of a full-service law firm. A full-service law firm can provide needed day-to-day back up to the designated city attorney and greater expertise in the broad range of issues associated with municipal law. Existing office space at City Hall could be used by a contract City Attorney when the latter is on site.

Recruitment Options:

If the services of a full-time City Attorney is desired by the Council, then a search firm could be selected to handle the recruitment. Generally speaking, a search for this recruitment would cost approximately \$15,000, with expenses from \$5,000 - \$6,000. What is not known is the caliber of the candidate the Council will receive from a new recruitment.

Human Resources is presently handling the recruitment of 20 City positions. It is not recommended that an in-house recruitment for City Attorney be used to avoid delays in filling other needed City positions.

If a contract City Attorney is desired, the Council could continue using the services of Jorgenson, Siegel, McClure & Flegel. There is no provision in State law requiring that professional legal services be placed out to competitive bids as would be the case for capital improvement projects. However, if the Council wishes to receive proposals from competent legal firms providing full legal services, a "Request for Qualifications" could be solicited and interviews held.

Staff believes that the cost to provide legal services by contract would be less than providing two in-house attorneys. However, cost should only be one factor, not the controlling factor in deciding the issue. The central issue will be which choice provides the City of Morgan Hill with the best legal services to meet the needs of the Council, staff, and the municipal corporation.

In either the full-time or contract option, this office believes it is important to retain in-house the services of the Legal Secretary as a resource to providing adequate legal services and support to the City of Morgan Hill.

Other Issues and Concerns:

The question before the Council is whether you have sufficient information now to decide the issue of how legal services are provided to the City of Morgan Hill or if you need additional information.

I recently discussed this matter with Mayor Kennedy. He indicated that he had not yet decided the best approach to take with regard to the provision of legal services. He suggested that a complete study be conducted either by in-house staff or by contract services to identify:

- 1. The pros and cons of a full-time attorney v. a contract attorney.
- 2. A detailed cost comparison and analysis of each option.
- 3. Conduct a new survey of how selected Bay Area cities are handling the provision of legal services.
- 4. The availability of competent recruits for a full-time City Attorney position.
- 5. The availability of full-service law firms in the Bay Area.
- 6. An in depth assessment and determination of the Council's individual and collective expectations for the City Attorney's function.
- 7. Are the services of a Deputy City Attorney needed, if the in-house model is used?

While some of the requested information may be addressed, in part, in this brief update, the full range of issues raised by the Mayor would require the commitment of substantial time and effort by City staff to achieve. Current City staff work loads would have to be adjusted to achieve this end.

Avoidance of Perception of Partiality to Either Option:

City staff and the City Manager will work effectively with either a full-time or contract City Attorney. To avoid any perception of partiality on the part of the City Manager or staff, it might well be prudent for the City Council to contract for the services of a professional to undertake the in-depth study. This would be particularly effective in determining Council's individual and collective judgment on the role you wish the City Attorney to take in the organization. Such a study could be completed and presented to the Council within an estimated ninety-day time period for a cost estimated to be from \$6,500 to \$10,000.

The Acting City Attorney has expressed her full willingness and desire to assist the Council in whatever way possible to decide the issue of in-house versus contract legal services. To her credit, the Acting City Attorney does not want a perception left with Council or staff that her advice is in any way influenced by the fact that her firm could be a beneficiary of a decision of the Council to contract out for legal services.

Conclusion:

The City is presently receiving competent legal services. There is no need to rush to make a decision one way or the other, unless the Council is fully comfortable with one of the two

identified legal services delivery options. It appears unanswered questions remain that need to be addressed. If an in depth analysis is desired, this office agrees with the thoughts of Mayor Kennedy that an independent third party should be used to conduct the remainder of the review as defined.

DAVID M. JINKENS

c: Acting City Attorney
Department Directors
Key Management Staff

Attachments - 2

Chapter 2.09

CITY ATTORNEY

Sections:

2.09.010 Office created.
2.09.020 Powers and duties.
2.09.030 Council orders and instructions—Restrictions.

2.09.010 Office created.

The office of city attorney is established. There shall be a city attorney appointed by the city council on the basis of his or her experience and ability. The city attorney shall serve at the pleasure of the city council. The city attorney may be employed through and subject to a written contract, notwithstanding any appointive or removal authority otherwise provided for in this municipal code or personnel policies of the city. (Ord. 1417 N.S. § 1 (part), 1998)

2.09.020 Powers and duties.

The city attorney shall have the power and be required to:

- A. Represent and advise the city council and all city officers and employees in all matters of law pertaining to their offices;
- B. Represent and appear for the city, its council, boards and commissions, in any or all legal actions or proceedings in which they or any of them are concerned or are a party;
- C. Upon request of a current or former officer or employee of the city, defend such officer or employee in any legal action or proceeding brought against such officer or employee, either in their official or individual capacity or both, on account of any act or omission in the scope of their employment as an officer or employee of the city, and whenever the city is required by state law to provide such defense or whenever the council elects to provide such defense even though not required to do so. Provided, however, that the city attorney may refuse to provide such defense whenever, in his or her opinion, provision of such a defense would

conflict with other duties or responsibilities, in which event the city shall provide other legal counsel if required to do so under state law or if the council elects to do so;

- D. Attend meetings of the city council and redevelopment agency, attend other boards and commissions as deemed necessary by the city attorney, provide advice or opinion verbally and/or in writing whenever requested to do so by the city council, boards, commissions or other officers of the city;
- E. Approve the form of all bonds given to and all contracts made by the city, endorsing approval thereon in writing;
- F. Prepare any and all proposed ordinances or resolutions for the city, and amendments thereto;
- G. Prosecute on behalf of the people all criminal cases for violation of the municipal code and state law as appropriate;
- H. Subject to the approval of the city council, determine the composition of the staff of the city attorney's office. Notwithstanding other provisions of this code or personnel rules, regulations or practices to the contrary, the city attorney shall appoint, supervise, discipline and dismiss such staff in his or her discretion, provided, however, that salary and benefits of such staff are subject to establishment by the city council. For purposes of this chapter, the term staff shall be defined as including deputy and assistant city attorneys, paralegals, law clerks, interns and clerical support personnel;
- I. Author and administer the department budget, submitting the same to the city council for its approval;
- J. Ensure that in his or her absence or disability, an acting city attorney is duly designated and available to the city council and staff;
- K. On vacating the office, surrender to his or her successor all books, papers, files and documents pertaining to the city's affairs;
- L. Perform such other legal functions and duties incident to the execution of the foregoing powers as may be necessary, and perform such other legal services as may be required by the city council or imposed by law.

(Morgan Hill 7-99)

The city attorney shall have control of all legal business and proceedings, including the employment, in the city attorney's discretion, of other attorneys, appraisers or other technical and expert services to assist with or to take charge of any litigation or matter. (Ord. 1417 N.S. § 1 (part), 1998)

2.09.030 Council orders and instructions— Restrictions.

The city council and its members shall deal with the legal services of the city only through the city attorney, except for the purpose of inquiry, and neither the city council nor any members thereof shall give orders to any subordinates of the city attorney. The city attorney shall take his or her orders and instructions, when necessary, from the city council only when given at a duly held meeting or under the direction of the legal subcommittee (as directed by the city council), and no individual council member shall give any orders or instructions to the city attorney. (Ord. 1417 N.S. § 1 (part), 1998)





EXECUTIVE MANAGEMENT COMPENSATION SURVEY

CLASS: CITY ATTORNEY

All compensation information was in effect on or about May 1, 1999. Deferred compensation contributions are only shown whe that benefit, and not where they are an employee option.

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Agency	Class Title	Salary/Month	Agency-Paid Employee PERS	Deferred Comp
Palo Atto	City Attorney	\$11,783	7%	0
Mountain View	City Attorney	11,173	0	0
Cupertino	City Attorney	10,595	7%	0
Burlingame	City Attorney	8075-9816	0	\$21.67 ^{a)}
San Bruno	City Attorney	9745	0	0
Morgan Hill	City Attorney b)	9010	0	
Los Gatos	Town Attorney	7539	7%	2.5%
1 7a) An employee ma	atch is required	, 222	1 70	0

Ta) An employee match is required.

The function is performed by a part-time City Attorney on a retainer in the following agencies:

Campbell	Millbrae
Foster City	Milpitas
Gilroy	Saratoga
Los Altos	Union City

b) Position is presently vacant; compensation reported applied to the former incumbent.



CITY COUNCIL STAFF REPORT MAY 4, 2005

RECONSIDERATION OF FISCAL YEAR 2005/2006 OPERATING AND CAPITAL IMPROVEMENT BUDGET WORKSHOP DATE

RECOMMENDED ACTION(S): Consider Mayor's request to reschedule the Fiscal Year 2005/2006 Budget Workshop

Agenda Item # 22
Prepared By:
Council Services & Records Manager
Submitted By:
City Manager

EXECUTIVE SUMMARY:

On February 16, 2005, staff presented the City Council a recommended Fiscal Year 2005/06 Operating and Capital Improvement Budget Schedule. The Budget Schedule, as approved by the Council, is as follows:

Dates	Event		
Fri, May 13	Proposed FY 2005/06 Budget given to City Clerk's Office for distribution		
Wed, May 18	Proposed FY 2005/06 Budget presented to City Council as agenda item		
Fri, May 20	Proposed Workshop with City Council. Department presentations		
Wed, June 15	Public Hearing for Proposed FY 2005/06 Budget & CIP Program and		
	Workplan		
Wed, June 22	Proposed adoption of FY 2005/06 Budget		

Mayor Kennedy requested that staff agendize the discussion of rescheduling the Friday, May 20 budget workshop. As such, the Council had the opportunity to review and discuss alternative meeting dates on April 20. One possible alternative date identified was June 10, 2005. The City Council continued this item to May 4 to allow Council members the opportunity to review calendars and availability for a June 10 budget workshop. Staff is requesting that Council identify and confirm a budget workshop date for staff presentation of the Fiscal Year 2005/06 Operating and Capital Improvement Budget.

FISCAL IMPACT: No Fiscal Impacts.